New guidance on handling Home Office delay in judicial review cases

James Packer — 28 January 2014 — 1 Comment

Routine, repeated delay in providing Acknowledgements of Service by the Home Office in judicial review cases reached such a pitch in 2013 that the court held a hearing into the matter (as previously covered on this blog).

The Home Office blamed a rise in the number of claims, though from my own experience I conclude that an unthinking and rigid approach to Points Based System and family immigration Appendix FM applications, coupled with the ongoing failure to clear backlogs of applications made years ago, despite repeated promises to do so — and even announcements that this has been completed — is the ultimate cause.

Hickenbottom J in *R (on the application of Jasbir Singh) v Secretary of State for the Home Department* [2013] EWHC 2873 (Admin) gave general guidelines, and while essentially giving a free pass to the Home Office for the first application he held at para 25

> subsequent applications must be supported by a full explanation for the delay in compliance and a firm promise to the court as to when the acknowledgement of service and summary grounds will be filed. Repeat applications with barely aspirational dates, such as have been made in the past, are to be deprecated. On second and subsequent applications, the court should scrutinise the reasons for the delay rigorously; and the Secretary of State should be prepared for such applications to fail unless she has produced compelling reasons specific to the case as to why further time is needed.

The Home Office were apparently confident that the problem would be resolved by 2014, Hickenbottom stating

> If … the tide of claims continues to rise so that Mr Hobbs' expectations are frustrated – then it is incumbent on the Secretary of State promptly to inform the President of the Queen's Bench Division and the Lead Judge of the Administrative Court as to the new problems that have arisen, the steps being taken to address them and the proposed timetable for ensuring that the position is rectified.

Immigration lawyers will be well aware that since that time there has been little discernable improvement in the practice of the Home Office, and in particular, that requests for extensions of time continued to be made just as frequently, and on entirely generic grounds.

New guidance

Field House in London

Immigration judicial reviews having been transferred to the Upper Tribunal, I made two applications for interim relief in separate cases, in each seeking an order that permission be decided on the papers filed within seven days, and sought a hearing that would give general guidance on the issues.

That hearing has now taken place and the Upper Tribunal had to grapple with the distinction between the CPR and the Upper Tribunal rules, and the extent to which it would follow *Singh.* Judgment is reserved, and is expected to be promulgated in a few weeks time. The Tribunal was clear that it had not reached its final conclusions, but the parties were given an indication that the judgment is likely to include the following provisions:

- The UT will follow *Singh* in spirit, but issue detailed guidance which will take effect from a date to be identified in the judgement.
- The parties will not be able to agree to extensions of time.
- The Home Office will continue to have six weeks before being required to make a detailed case for an adjournment,

unless expedition has been sought by the Claimant. This arrangement will continue for a period of time identified in the judgement, following which this special dispensation will be withdrawn.
- 'Expedition' will mean an application to have permission decided within six weeks of issue.
- Second and subsequent applications must be made on notice to the Claimant. Generic second and subsequent applications will be refused. The Tribunal will proceed to determine the permission application on the papers.
- If permission is granted, directions will be given that mimic the CPR requirement to file detailed grounds and full papers in 35 days. If these are not provided, the Home office may be barred from taking any further part in proceedings.
- If the late production of material by the Home Office has increased costs, such as the costs incurred at an oral permission hearing that would not have taken place but for the default as it became clear that the claim was wholly without merit, the Home Office will bear those costs.

Other interesting features of the hearing

The Home Office disclosed the correspondence they have had on these issues both pre- and post- *Singh.* Interestingly, despite the passage quoted above there had been no attempt to update the Court until these applications were set down for a hearing (and then it only amounted to further laments about the number of claims). The documents did however include a pretty blatant refusal by the Home Office to follow *Singh,* set out in correspondence with Master Gidden who had pointed out that 'second applications' were still being made in generic terms.

The content of the generic applications gives a clear impression that the Treasury Solicitor is not in contact with anyone in the Home Office about the case. However, it emerged that T-sols make applications on the basis of being 'without instructions' when they are in fact in contact with the Defendant about running the defence, albeit not to the level of detail that T-sol would prefer.

The practice of the Home Office resisting temporary admission requests (and bail applications) on the basis that expedition is being sought does not arise from those instructing the Treasury Solicitor directly. Hence – as in one of the applications – the Home Office caseworker often resists temporary admission on the basis that 'expedition is being sought', but the Treasury Solicitor, instructed by a separate individual in the litigation team (rather than the casework team which decides the TA request) is simultaneously seeking an extension of time on the basis of a lack of instructions.

In Guest post, Judicial review, Procedure

James Packer

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'Exceptionally diligent' and 'Exceptional' is what Legal 500 2013 says about James Packer. James has been recognised as a Leading Lawyer in his Field within the Chambers UK 2014 edition and has been highly recommended for his expertise by Legal 500 2013 for both his Public Law and Immigration work.

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One response to *New guidance on handling Home Office delay in judicial review cases*

Philip 28 January 2014 at 8:25 pm

The Home Office is institutionally incompetent and its right hand does not know what its left hand is doing. Sadly, this doesn't really qualify as news! I had an instance today where the Home Office had written to my client as if he was a legal representative, complete with telling him his client would be receiving a copy of the letter! No mention of the correspondence from his actual legal representative, which had raised some

pretty important issues (so important that we've now gone to judicial review, although the Home Office couldn't be expected to know that yet).

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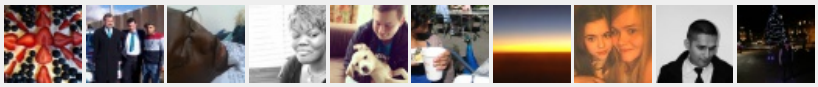

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