

New judgment on delays by Home Office in judicial review cases

James Packer — 3 March 2014 — 2 Comments

The Upper Tribunal has in a new [judgment](#) now set out how it will deal with the vast majority of judicial reviews in which the Home Office fail to provide a timely Acknowledgment of Service. The ruling almost entirely follows the form anticipated in our [blog post](#) following the hearing.

The most surprising feature of the final form of the judgment is that, despite a pretty clear indication at the hearing that these 'special arrangements' would have a clear end date following which the ordinary rules would apply, upon reflection this has been watered down to keeping the arrangements 'under regular review'. Despite the commitments made in Singh, and further claims before the hearing to be getting to grips with the backlog and that further improvement would soon follow, the Tribunal treated the promises of progress with some scepticism, and the Home Office was constrained to accept that the reality is that delays will continue for many months.

Those acting for applicants are invited to make sure that the Tribunal is aware of any further issues that arise out of the new arrangements (see final paragraph).

New positive features arising from the final form of the judgment

Where an applicant who did not seek expedition at the time of his application wishes the Tribunal to 'urgently' (i.e. within six weeks) consider permission but seeks no other interim relief there will be no need for a formal application or fee, and a simple letter setting out the need for urgency and the proposed timescale (paragraphs 36 & 37) will suffice.

New negative features

The utility of the above is immediately undermined by the statement that the Tribunal will not 'ordinarily' respond to the letter so the applicant will discover a refusal to expedite by the passing of the timescale suggested.

Quite apart from the unnecessary discourtesy, this means that an applicant suffering from delay will be unaware of the outcome until a potentially important deadline has expired, and will be ignorant of the reason the Tribunal had for refusing his application, making a repeat application unnecessarily difficult. It also means that the applicant will be unaware whether his application was truly refused or merely lost in the Tribunal's (far from perfect) back office administration.

While the Home Office placed the Tribunal in an impossible position through its routine failures, there does remain an uncomfortable impression that the Home Office is a favoured litigant. Is it even possible to imagine an extension of time for applicants generally on the basis that legal aid cuts had made decent representation nearly impossible to find, for example?

Although there are some positive features for applicants in the judgment, in my view the Tribunal should have gone further and made clear that the Home Office will not receive their costs for producing defences where they are submitted out of time. At the hearing there was a semi-veiled threat by the Home Office through counsel that if the Tribunal took that course they would not see the point of producing an Acknowledgment of Service and would let the Tribunal do its best on the papers. That irresponsible attitude, contrary to their duties under rule 2(4), should have been stamped on – and hard.

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Philip 3 March 2014 at 10:01 pm

Looks to me like Tsol will take the "don't bother with an AoS" attitude anyway. Relying on the response to PAP will become commonplace. I have noticed that it is becoming increasingly common for the JRU actually to make a response to PAP, which was previously almost unheard of. Now I guess we know why.

I suppose the efficient thing would be to submit the request for expedition at the same time as the claim form. I see why the tribunal doesn't reply though: a reply would be a decision of the tribunal and appealable.

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