



## Duncan Lewis

The Clerk to the Hon. Mr. Justice Ouseley  
Lead Judge  
Administrative Court Users' Group  
Royal Courts of Justice  
The Strand

Our ref: JP  
Your ref:  
Date: 25 July 2013

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Dear Judge,

**RE: Delay in judicial review cases by the Secretary of State for the Home Department**

At the Administrative Court Users Group meeting I noted your concerns about the state of the list. That has prompted me to write to you through your clerk to raise a number of issues about the practice of the Secretary of State for the Home Department and the Treasury Solicitor in respect of claims for judicial review that have a direct impact on the state of the list, and which also give rise to other issues.

I would be grateful if you would consider whether this letter should be circulated to the Users Group, and whether it would be suitable for any of the issues that I raise below to come on to the agenda for the next meeting. I also intend in any event to circulate copy of this letter to the Secretary of State, the Treasury Solicitor, ILPA and ALBA.

We at Duncan Lewis are becoming increasingly frustrated by the attitude of the Secretary of State to the directions of the Court. For some time the Secretary of State appears to have taken the position that directions apply solely to Claimants. We hope that the amendment to CPR. 1 will encourage the Court to take a firmer stance where the Secretary of State for the Home Department is concerned.

Our primary concern is that the Treasury Solicitor so frequently seeks an extension of time to serve an Acknowledgement of Service (usually by requesting that a Claimant 'agree' to the Defendant's breach



of CPR 54.8) on the simple basis that he cannot obtain instructions. This makes a mockery of the rule that a Defendant has 21 days in which to produce the Acknowledgement and Summary Grounds. We further consider that the informal nature and tone of the attached documents strongly suggests that the Secretary of State feels immune from sanction for her stance. I am not aware of any instance in which the Court thereafter barred the Secretary of State from participating in an oral permission hearing, or was even required to make a formal application to do so, though we note the seemingly mandatory terms of CPR 54.9(1)(a).

So concerned have I become by the sheer volume of these requests that from 21<sup>st</sup> May onwards I have retained a copy of every occasion that came to my attention on which the Secretary of State sought an extension on this basis where Duncan Lewis represent the Claimant. The attachments (39 requests in 40 working days) do not demonstrate the full scale of the problem as many of these requests are sent to our official correspondence address at our Harrow office and do not come to my attention.

Naturally any delay that incurs at the outset will affect the state of the list throughout the life of the claim, especially as so many of these letters are in fact repeat requests (and many of them multiple repeats) where instructions have apparently still not been received: see documents A, B, F, J, O, S, U, W, X, Z<sup>1</sup>, AA, AI, and AM. We consider this to be a matter of particular concern as the Secretary of State for Justice is justifying restricting access both to the Court and to legal aid for judicial review challenges on the basis that judicial review challenges are taking too long to decide. Clearly his colleague is herself a large part of the whole of the delay in the Administrative Court,

We note further that there is also a growing practice on part of the Treasury Solicitor to seek in these letters more time by way of an extension than would be allowed under the rules of the Court in the first place, even after an already lengthy delay. The documents S1 and S2 are an example. According to the letter at S2 the Acknowledgement of Service was due on 22<sup>nd</sup> May 2013: on 21<sup>st</sup> June 2013 the Treasury Solicitor, solely on the basis that she was awaiting instructions from her client, sought an extension of time for the production of serving summary grounds until 22<sup>nd</sup> July 2013, a delay of a

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<sup>1</sup> by inference, though we note that the Treasury Solicitor does not actually spell this out in his application

further 30 days. We query if this is an acceptable practice given that CPR 54 provides only 21 days for the Acknowledgement of Service to be produced in the first place.

As a further issue, we note that the Court is under a great deal of financial pressure and faces cuts and restrictions to the services that it can provide within the budget allowed by the Ministry of Justice. With respect, we question the Court's indulgence to the Secretary of State in these matters and suggest that the Court should make plain to all Defendants that if they seek an extension of time to provide an Acknowledgement of Service that they will only be permitted to do so if the Defendant makes a formal application to that effect together with a fee. The above data suggests that this may go some way to easing the financial burden on the Court.

We are grateful for your attention to these matters and hope that you will see fit to take some of these issues forward through the Administrative Court Users Group and/or any other avenue that appears appropriate to you.

If you have any queries, please contact James Packer on the above details.

Yours sincerely

A handwritten signature in black ink, appearing to read 'J. Packer', with a long horizontal flourish underneath.

**James Packer**  
**Director, Duncan Lewis**

CC ILPA; ALBA; Treasury Solicitor, Secretary of State for the Home Department