



# Understanding the CPR

Understanding the applicable parts of the CPR and the governing principles is a bit of a minefield, says **Annabel Graham Paul**

**A**mending a judicial review claim after issue can be necessary to ensure that the arguments before the court reflect a developing factual situation. In *R (B by her litigation friend MB) v Lambeth* [2006] EWHC 639, the claimant was strongly criticised for wasting costs by failing to produce amended judicial review grounds to deal with new facts that occurred since her claim was issued.

More often, however, claimants seek permission to amend a claim after the time limit for filing the claim form in CPR 54.5, either to add new grounds of challenge or to substitute grounds for those originally pleaded – in other words, to improve their case.

CPR 54.15 makes clear that a claimant may in principle rely on additional grounds, but the court's permission is required. Notice should be given to the court and to any other person served with the claim form of the intention no later than seven clear days before the substantive hearing (or warned date) (PD54, paragraph 11.1).

How the court will exercise its discretion will turn on the overriding objective and the interests of justice. There are no hard and fast rules. Nevertheless, certain common themes have emerged from the case law:

- a) additional grounds are not subject to the time limitation in CPR 54.5 provided that the judicial review claim itself was brought promptly and in any event within three months; however the additional point raised must not represent a free-standing challenge (*R (on the application of Bancoult) v Secretary of State for Foreign and Commonwealth Affairs* [2012] EWHC 3281 (Admin) at [10] per Richards LJ).
- b) Delay may be a factor relevant to the court's discretion to refuse to allow an amendment eg if it would cause substantial hardship to or substantially prejudice others' rights (*R (on the application of RP) v London Borough of Brent* [2011] EWHC 3251 (Admin) at [160] per Stadlen J).
- c) Such hardship or prejudice must arise

from the inclusion of the proposed new grounds (*RP* at [164]); it will be particularly relevant whether the defendant is disadvantaged in fairly presenting its case in opposition to the claim eg if relevant officials have moved on (*RP* at [165] – [167]).

- d) A further consideration is the impact the amendment would have on good administration or the court process eg if its introduction would involve vacating a fixed hearing (*Bancoult* at [18]).
- e) These matters must be balanced against the disadvantage to the claimant of being prevented from advancing an arguable issue, and as such the merits of the proposed additional or substitute grounds should be taken into account (see *Bancoult* at [19]).

Often a court will grant judicial review permission for some grounds but not others. The appropriate redress for a claimant who wishes to rely on the rejected grounds is appeal to the Court of Appeal. However, a court hearing the substantive application on the permitted grounds may exercise its discretion under CPR 54.15 to hear the refused grounds if there is good reason to do so, bearing in mind the interests of the defendant. Exceptionally, this may happen even where no legal or factual change of circumstances has occurred since the refusal of permission (*R (Smith) v Parole Board* [2003] 1 WLR 2548 at [16] per Lord Woolf CJ).

Applications to amend the grounds of public law claims which are not governed by CPR Part 54 fall to be determined in accordance with CPR Part 17 (Amendments to Statements of Case). CPR Part 17 was not, however, drafted with public law cases in mind.

In the recent case of *San Vicente v Secretary of State for Communities and Local Government* [2012] EWHC 3585 (Admin) the claimants sought to substitute their grounds of challenge after the six week time limit for bringing claims under section 288 of the Town and Country Planning Act 1990. The court held that this was not a period

to which the restrictive test in CPR 17.4 applies. Instead, the only requirement is the permission of the court (CPR 17.1(2)(b)) and discretion will be exercised in a similar way to judicial review amendments under CPR 54.15.

The principles discussed in *San Vicente* may well apply to challenges under other statutory regimes, if they fall outside the terms of CPR 17.4, although individual cases must be viewed on their own merits.

CPR Part 54 does not provide expressly for the substitution of a claimant after the issue of a judicial review claim. However, the court has an inherent jurisdiction to allow such a substitution. Substitution may only occur where the original proceedings are live and the new claimant has sufficient standing for judicial review (*R (on the application of River Thames Society, Lady Berkeley) v First Secretary of State* [2006] EWHC 2829 (Admin) and *R (SDR) v Bristol City Council*; *R (ABC) v Bristol City Council* [2012] EWHC 859 (Admin)).

In *River Thames Society, Underhill J* considered that, while CPR Part 19 (Parties and Group Litigation) could not accommodate public law substitution, the court's inherent jurisdiction should be exercised in accordance with the principles in CPR 19.2. In the context of public law proceedings, the appropriateness of substitution after three months is limited to circumstances where both the original and proposed claimants are acting for the benefit of a wider group.

There is accordingly a discretion (not a right) to amend judicial review claims after issue or to substitute claimants. The case law is now sufficiently settled for clients to be reasonably certain as to the court's guiding principles and their corresponding prospects of success.



Annabel Graham Paul is a barrister at Francis Taylor Building ([www.ftb.eu.com](http://www.ftb.eu.com))