LITIGATION

Judicial review for agricultural lawyers

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Many agricultural lawyers will spend long and happy personal and professional lives without ever finding themselves or their clients in conflict with Central or Local Government or a statutory body which makes a decision inimical to the agricultural lawyer's or his or her clients' interests.

In the real world, however, agricultural lawyers and their clients often come up against the Crown in its various manifestations and while those interactions are generally positive or at least manageable without recourse to Public Law litigation, others, sadly, are not and a Judicial Review has to be considered or, if the circumstances require it, pursued.

The Planning Court

Until the institution of the specialist Planning Court on 6th April 2014 all litigation challenges to such administrative decisions were pursued through the Administrative Court and in practice the Administrative Court Office manages not only the Administrative Court's caseload but also the Planning Court's caseload.

Until 1st July 2013 all Judicial Review claims had to be brought within three months of the decision complained of. From then on the Judicial Review challenges to Planning Permissions which would otherwise have had the standard three months limitation period or time limit were only justiciable if the Claim Form was issued within six weeks.

Three months is a short enough time limit in all conscience but since 1st July 2013 Judicial Review challenges to Planning Permissions need to be pursued by issuing a Claim Form within six weeks of the Planning Permission which is proposed to be challenged.

Any client who objects to a Planning Permission granted on neighbours' land or to a decision by Central or Local Government or a statutory body needs to bear this very short limitation or time period in mind when dealing with planning cases. All other administrative decisions, of course, must be challenged within three months of the date on which the decision is made.

The Administrative Court is now one of the busiest separate specialist courts within the English judicial system.

Civil Procedure Rules

Like all civil litigation, Judicial Review challenges are governed by the Civil Procedure Rules (CPR) and the particular part of the CPR relevant to Judicial Review is CPR Part 54. Forms are to be found in CPR Practice Direction 4.

If in any doubt, apply to the Administrative Court Office for forms which are not available on line or which cannot be found easily bearing in mind the very limited amount of time available (no more than three months and in planning cases no more than six weeks).

The principal relevant forms are to be found in CPR Practice Direction 4 Table 1, including the main Judicial Review Claim Form (N461), the Specialist Claim Form for the Planning Court (N461(PC)), the Acknowledgement of Service (Form N462) and its counterpart in the Planning Court: N462(PC), the rarely used Application for Urgent Consideration (Form N463) when time is of the essence perhaps because the decision has been made and is in the process of being implemented as well as its Planning Court counterpart Form N463(PC).

Various subsidiary forms also need to be completed namely:

- the N215: Certificate of Service;
- the N244: Application Notice;
- the N260: Statement of Costs; and
- two specialist forms which need to be used in particular circumstances: the Form N279 (Notice of Discontinuance, where your client decides not to pursue the Judicial Review further); and the Form N434 (Notice of Change of Legal Representative) where the client decides

to dismiss you and replace you with another lawyer or to represent himself or herself.

The crucial nature of timings

Bearing in mind the focus on time in Judicial Review claims due to the short time limit or limitation period, every day including weekends and Bank Holidays will count except for the day of the decision or act or order complained of.

Thus a decision made on Monday 17th September 2018 will be justiciable as long as the Claim Form is issued on or before 18th December 2018 i.e. three calendar months from the day after the decision or act or order itself was made.

Administration

The Administrative Court is part of the Queen's Bench Division of the High Court which in turn is one of three divisions of the High Court: the others being the Chancery Division and the Family Division.

The Administrative Court hears most applications for Judicial Review along with statutory appeals and applications which fall outside the scope of this article.

A Judicial Review challenge is the means by which an individual or a limited company or an incorporated association (by an elected or appointed officer) can challenge the act or omission of a public body and ensure that the public body acts in accordance with the law.

A few Judicial Review cases and in particular those challenging decisions for Magistrates' Courts and Crown Courts on a point of law are referred to a Divisional Court consisting of one Lord Justice of Appeal and one High Court Judge.

Cases in the Administrative Court are dealt with by a single High Court Judge sitting alone. Planning cases dealt within the specialist Planning Court are also dealt with by a single High Court Judge chosen from a special panel who are deemed to have the necessary expertise.

The administrative burden of dealing with Judicial Review cases is shouldered by the Administrative Court Office (ACO) and at present the ACO also manages the work load of the Planning Court.

> "Challenges to planning permissions need to be pursued by issuing a claim form within six weeks of the planning permission which is proposed to be challenged"

Apart from the main ACO in the Royal Courts of Justice, London, there are also regional ACOs in Birmingham, Cardiff, Leeds and Manchester.

Choosing the right defendant

The Defendant in Judicial Review proceedings is either a public or statutory body or the public office holder which made the Decision that is under challenge or which failed to make the Decision where the failure to make that decision is challenged.

The Defendant will not be the particular individual with the day to day carriage of that particular issue.

In cases where the decision or failure to decide is attributable to a Central Government Department, it would be the relevant Secretary of State who is the Defendant.

If the day to day decision challenged is by a civil servant working in, for example, the Department for Transport, the correct Defendant would be the Secretary of State for Transport and not the individual civil servant with whom your client has been dealing.

In some cases it will be a Court or a Tribunal which has made the Decision and in that case the Court or Tribunal is the correct Defendant.

Quite often the actual opposing body is identified and should be named on the Claim Form as an Interested Party. An example would be where your client objected to a decision made by the Highways England Company Limited (Highways England) which in turn is an establishment of the Department for Transport.

In such a case the Defendant will be the Secretary of State for Transport but Highways England ought to be named as an Interested Party in the Claim Form giving it an opportunity to participate in the Judicial Review proceedings if it wishes to do so although usually it leaves defending the Judicial Review challenge to the Secretary of State via the Government Legal Department.

Obviously agricultural lawyers who are not litigators either need to find a litigator within their firm who is prepared to take the Judicial Review challenge forward or need to find another firm prepared to pursue the Judicial Review if possible without poisoning the existing solicitor and client relationship.

The choice of Counsel will always be crucial and it is true to say that Judicial Review litigation is a particularly complex and specialised area where there will inevitably be very substantial reliance on Counsel rather than great focus being on the Instructing Solicitor whose role will be to manage the proceedings based on Counsel's drafts, to collect and marshal the evidence as directed by Counsel and to see to it that the procedural and documentary obligations (which can be very heavy indeed) are dealt with under conditions of the utmost urgency but are accurately undertaken.

An Order for Costs

If all goes well and the decision or act or order is quashed at the end of the Judicial Review, an Order for costs ought to follow but practitioners need to bear in mind the recently modified CPR provisions applying the Aarhus Convention which, while they limit costs awards against unsuccessful Claimants, also limit the costs awards in favour of successful Claimants.

Care needs to be taken to decide whether to invoke Aarhus Convention Costs Protection if it is available. There is a strong argument for not invoking it in cases where you and your client are reasonably confident about the outcome.

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