

Civil Procedure Rule Committee: Pre-Action Protocol for Judicial Review

**A response by
The Chartered Institute of Legal Executives**

November 2014



For further details

Should you require
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Introduction

1. The Chartered Institute of Legal Executives ('CILEx') is the professional association and governing body for Chartered Legal Executive lawyers, other legal practitioners and paralegals. We represent around 22,000 members, including approximately 7,500 qualified lawyers.
2. We work closely with Government and the Ministry of Justice and we are recognised as one of the three core branches of the legal profession.
3. Chartered Legal Executives offer legal businesses and clients a combination of practical knowledge and experience, together with specialist academic legal knowledge. They make an important contribution to the delivery of effective legal services across a range of areas of law.

General comments on the pre-action protocol

4. We welcome the opportunity to comment on the proposed pre-action protocol for judicial review. Strict compliance with the protocol is essential in every case subject to the exceptions in the text. Judicial review is a remedy of last resort. We are pleased that this is made clear in the proposed protocol. However, this must be supplemented by robust case management by judges. CILEx has made clear its opposition to the proposed changes to judicial review contained in the Criminal Justice and Courts Bill. Judicial discretion coupled with robust case management makes the proposed changes more difficult to justify.

Paragraph 1

5. We note that the second sentence in paragraph 1 is approximately 90 words long. The protocol will have several audiences. Language needs to be accessible not only to lawyers but the lay person and litigants in person. Our proposed changes have this in mind. We propose the following:

'This protocol is limited to England and Wales only. It does not make changes to the time limit under Rule 54.5(1) of the Civil Procedure Rules (CPRs). This requires that any claim for judicial review (JR) must be made promptly. In any event, no later than 3 months after the grounds to make the claim first arose. Rules 54.5(5) and (6) sets out a shorter time for planning, and procurement judicial reviews. These must be made within 6 weeks and 30 days respectively.'

Paragraph 2

6. We propose the following:

'This protocol sets out a Code of Practice. All parties, as a general rule, should follow the protocol before making a claim for judicial review.'

Paragraph 4

7. At paragraph 4 consider changing 'lawfulness' to 'legality'.

Paragraph 6

8. We propose the following:

'This protocol is not appropriate in very urgent cases. A claim should be made immediately in urgent cases. Examples of urgent cases are:

- *Decisions made for the claimant's removal from the UK; or*
- *Where there is an urgent need for an interim order to compel a public body to act where it has unlawfully refused to do so (for example, where a local authority fails to secure interim accommodation following a homelessness application).*

A letter before claim, or a claim itself, will not stop a disputed decision from taking effect. Although, a proposed defendant may agree to take no action until its response letter has been provided...'

Paragraph 7

9. Delete the first sentence. It does not add anything to the proposed protocol.

Paragraph 11

10. First sentence is in the passive. Change to active voice. Proposed amendment:

'The parties may be required by the court to provide evidence that ADR has been considered.'

Paragraph 12

11. First sentence too long. We suggest the following:

'Requests for information and documents at pre-action stage should be:

- *Proportionate;*
- *Limited to what is necessary for the claimant to understand why the disputed decision was arrived at; and in a*
- *Manner that will clearly identify the issues'*

12. Last sentence is in the passive. We propose the following:

'The court may impose costs sanctions on a public body which has failed to provide relevant information and/or documents, particularly where failure is a breach of statutory or common law requirement'.

Paragraph 13

13. First sentence in the passive. We suggest the following:

'The Claimant should send a letter to the defendant in good time before making a claim'.

Paragraph 20

14. Change to active voice as follows:

'The defendant should send an interim reply and a request for a reasonable extension if it is not possible to reply within the proposed time limit, giving a date by which the defendant expects to respond substantively'.

Annex C

15. Legal Aid for judicial review cases has been further restricted with more proposed restrictions contained in the Criminal Justice and Courts Bill. This is not reflected in Annex C.