

PUBLIC LAW PROJECT

Judicial Review  
London Trends &  
Forecasts 2011

*The Right to Know*

## **Defending Judicial Review Claims**

*An overview of recent developments and tips on  
strategy for lawyers defending judicial review claims.*

13 October 2011

**Tim Eicke Q.C.**

Essex Court Chambers  
24 Lincoln's Inn Fields  
London WC2A 3EG

## Outline:

### 1. Front-loading

- a. Impact of *R(Bahta et al) v Secretary of State for the Home Department* [2011] EWCA Civ 895
  - i. In absence of adequate response to Pre-action Protocol (“PAP”) letter, C can assume an order for costs against D if he receives relief sought or “substantially similar relief”
  - ii. Need for D to follow PAP;
  - iii. No special rule for Government departments [or other large public bodies, by reference to financial burden];
  - iv. Burden on D to justify departure from general rule and burden likely to be heavy one “if C has and D has not, complied with the PAP”;
  - v. Nevertheless, order for costs depends on merits of particular application and there may be cases where relief is granted for reasons entirely unconnected with the claim made [clear reasons required]
  - vi. Need to keep position under review - relevant date of assessment not the date of application for JR but date of determination of costs application
- b. Pre-action Protocol
  - i. Need for parties to have stated their case “clearly and competently”; C to have formulated claim adequately;
  - ii. Correct Defendant?
    1. Power to change the decision
    2. Correct addressee
  - iii. Content
    1. Date and details of decision/ref no/identifier
    2. Details of any relevant information
  - iv. Alternative remedy - inter-relationship with the Tribunal (see below)?
  - v. Disclosure
  - vi. Response within 14 days - possibility of seeking extension
  - vii. Claim not normally lodged before reply date
- c. Cost consequences

### 2. Impact of EU law:

- a. “promptly and in any event not later than 3 months after the grounds to make the claim first arose”
  - i. Case C-406/08 *Uniplex (UK) Ltd v NHS Business Services Authority* [2010] 2 CMLR 47
  - ii. *R (Buglife) v Medway Council* [2011] EWHC 746 (Admin); [2011] EnvLR 27;
  - iii. *R (U&Partners (East Anglia) Ltd) v the Broads Authority* [2011] EWHC 1824 (Admin)
- b. Principle of effectiveness - JR vs. appeal
  - i. *FA(Iraq) v SSHD* [2011] UKSC 22
- c. EU Charter of Fundamental Rights
  - i. *R (ToTel) v FTT (TC)* [2011] EWHC 652 (Admin)
  - ii. *ZZ v SSHD* [2011] EWCA Civ 440
3. Adequacy of JR for purposes of Article 6 ECHR
  - a. *R (MAS) v National Probation Service* [2011] EWHC 1332 (Admin)
4. Relationship with the Tribunal/parallel proceedings
  - a. Correct jurisdiction/alternative remedy
    - i. *Oxfam v HMRC* [2010] STC 686
    - ii. *Hannover Company v HMRC* [2010] UKFTT 256 (TC)
    - iii. *Matthews & Sidwick v HMRC* [2011] UKFTT 24 (TC)
    - iv. *Abdul Noor v HMRC* [2011] UKFTT 349 (TC)
  - b. Practicalities of transfer where parallel proceedings
5. Use of Closed Evidence/Special Advocates in JR proceedings
  - a. *Al Rawi v The Security Service et al* [2011] UKSC 34
  - b. *Home Office v Tariq* [2011] UKSC 35
6. Review of administrative action by reference to (unincorporated) public international law
  - a. *R (ICO Satellite Limited) v OffCom* [2010] EWHC 2010 (Admin)