

## Legal Proceedings

### I Procedure for handling claims for judicial review

#### 1. General

1.1 There is no statutory right of appeal against a refusal to grant British nationality. However, the possibility of judicial review is not excluded and the courts may, by this process, examine whether the Secretary of State has acted illegally, unreasonably or has made procedural errors in reaching his decision (did he, for example, fetter his discretion in an individual case by ruling out a general class of applicants?). In such circumstances the courts may:

- quash the decision (a 'quashing order'), and/or
- direct the Secretary of State to reconsider the application (a 'mandatory order')

1.2 Where a claim has been made for judicial review of a nationality decision, or is in prospect, it is important to be clear about the respective roles of the Judicial Review Unit, Treasury Solicitor's Department, the Senior Caseworker, NPSCU, Legal Adviser's Branch and FSD.

1.3 The **Judicial Review Unit (JRU)** is located within the Enforcement & Removals Directorate (UKIS). The Unit is responsible for co-ordinating and monitoring all judicial review cases. It can also give advice on the procedural aspects of judicial review work.

1.4 The **Treasury Solicitor** acts as the Home Secretary's legal representative in any judicial review proceedings. His role, or, in practice, that of that of the nominated officer in his Department, is to conduct the litigation in accordance with the Senior Caseworker's instructions. The Treasury Solicitor's Department will also appoint a barrister, or 'counsel', to appear in court on our behalf, and to give advice on general points of law.

1.5 Once proceedings are underway, any letters we propose to send to the applicant should normally be approved in draft by the nominated officer in the Treasury Solicitor's Department.

1.6 The **Senior Caseworker** is responsible for deciding, with assistance from **NPSCU** and/or **Legal Adviser's Branch** as necessary, whether or not the claim for judicial review should be opposed, and for instructing the Treasury Solicitor (who may also have a view) accordingly. **This decision should be kept constantly under review as the case proceeds.** The factors which might be taken into account include:

- whether the contested decision, and the procedure followed in arriving at it, were sound
- whether the outcome might have significant policy implications
- whether the potential cost of resisting the claim outweighs the benefits of a successful outcome

1.7 The **Senior Caseworker** is also responsible for keeping JRU informed of developments on the case. This is done by completing form JRU1, an example of which is at Annex A. In particular, a form JRU1 should be submitted if:

- an application for 'permission to proceed with a claim for judicial review' has been made
- the court has granted permission to proceed
- the case is to be conceded or reconsidered
- the case has been listed for hearing on a particular date

1.8 The Treasury Solicitor's Department charges IND for the services it provides, and the Senior Caseworker may be asked by **FSD** (which receives the invoices and makes payments on behalf of Nationality Group) to confirm that the services charged for have been provided.

1.9 **FSD** is also responsible for meeting costs to IND arising from out of court settlements, and should be notified in advance of proposed expenditure in such cases. **Payment of adverse costs in excess of £1000 must be approved in advance by a Deputy Director-General.**

## 2. Pre-Action Protocol

2.1 A 'Pre-Action Protocol' has been devised, the purpose of which is to encourage the parties to consider whether there is any scope for settling the dispute between them without involving the courts. Further information, and templates for the 'Letter Before Claim' and 'Letter of Response' mentioned below, may be found at [www.dca.gov.uk](http://www.dca.gov.uk).

2.2 Before making a claim for judicial review, the claimant should send a letter to the defendant. This is known as the 'Letter Before Claim'. The purpose of the letter is to identify the issues in dispute and establish whether litigation can be avoided. A claim for judicial review should not normally be made until the proposed reply date given in the letter before claim has passed, unless the circumstances of the case require more immediate action to be taken. (Where the court considers that a subsequent claim was made prematurely it may impose sanctions on the claimant.)

2.3 The defendant (i.e. the Secretary of State, represented at this stage by the Senior Caseworker) should normally send a 'Letter of Response' within 14 days. Failure to do so will be taken into account by the court, and sanctions may be imposed unless there were good reasons for the delay.

2.4 If the claim is being conceded in full, the letter of response should say so clearly and unambiguously.

2.5 If the claim is being conceded in part or not being conceded at all, the letter of response should say so clearly and unambiguously, and

- where appropriate, contain a new decision, clearly identifying what aspects of the claim are being conceded and what are not, or, give a clear timescale within which the new decision will be issued;
- provide a fuller explanation for the decision, if considered appropriate;
- address any points of dispute, or explain why they cannot be addressed; and
- enclose any relevant documentation requested by the claimant.

### 3. The 'permission' stage

3.1 In order to obtain a judicial review, the applicant must first satisfy the court that he or she has an arguable case. This is known as applying for permission to proceed.

3.2 The application for permission is made by lodging Judicial Review Claim Form 461 together with an affidavit, stating the facts of the case, with the Administrative Court Office. The Civil Procedure Rules provide that a claim must be commenced promptly and in any event within three months from the date when grounds for the claim first arose.

3.3 The claim form must be served on the defendant and, unless the court otherwise directs, any person the claimant considers to be an interested party within 7 days of the date of issue. Any person served with the claim who wishes to take part must file an acknowledgement of service, including (if appropriate) a summary of his reasons for wishing to contest the claim, not more than 21 days after service of the claim form. (Failure to acknowledge service does not, however, exclude the defendant from subsequent participation in the proceedings. Provided he files grounds for contesting the claim within 35 days of the court's order giving permission, he is entitled to appear at the substantive hearing.)

3.4 The court will usually, in the first instance, consider the question of permission without a hearing. Where it does so and refuses permission, or grants it only on certain grounds or subject to conditions, the claimant may request that the decision be reconsidered at a hearing (i.e. the claimant may renew the application in the same way as was previously possible). Where permission is refused on renewal, the claimant may appeal to the Court of Appeal for permission to appeal against the refusal. It is no longer possible, as was previously the case, for the defendant to appeal to have any grant of permission set aside.

### 4. Procedure in IND

4.1 If it is decided to contest the case, the senior caseworker must arrange **within 7 working days of receipt of the papers** for a copy of the file to be sent to the Treasury Solicitor's Department, together with a covering letter explaining the Home Office's position. (The JRU should be notified when this has been done.)

4.2 The Treasury Solicitor's Department will advise on such matters as the need for affidavits, the date of the hearing and whether the Senior Caseworker or any other person needs to attend any case conference or hearing.

4.3 If a Home Office affidavit is required, this will be drafted by Counsel and sent to the Senior Caseworker for swearing before a local solicitor. (NB. The witnessing solicitor will make a small charge for this service.)

4.4 A copy of the eventual judgement will be sent either directly to the Senior Caseworker or via JRU.

### 5. Position after the decision of the Administrative Court

5.1 Substantive consideration is given to judicial review applications by the Administrative Court. From there either party may appeal, with leave, to the Civil Division of the Court of Appeal and thence to the House of Lords. Any court in the United Kingdom may, if it considers the case raises issues of European Community law, refer such matters to the European Court of Justice for a preliminary ruling.

5.2 It will fall to the Senior Caseworker to consider, with the assistance of the Treasury Solicitor, NPSCU and LAB as appropriate, and having regard to the matters listed in paragraph 1.6 above, whether at each stage it would be more appropriate to contest or to concede the case.

5.3 All judgements should be copied to NPSCU for noting purposes.

## **II Requests from a court for Home Office views**

6. Any request originating from a Court for a letter setting out Home Office views on a matter before the Court or giving an account of Home Office policy as it would apply if certain decisions were taken by the Court, should be answered by NPSCU, referring to Legal Adviser's Branch as necessary.

<b>GROUP/MODULE:</b>	<b>CASEWORKER:</b>
<b>ROOM NO.:</b>	<b>EXTENSION:</b>
APPLICANT'S NAME:	
NATIONALITY:	
DATE OF BIRTH:	
H.O. REFERENCE:	
T/SOLS REFERENCE:	
TYPE OF CASE: Naturalisation etc.	
DATE OF PERMISSION APPLICATION: [Date of form 461]	
LEGAL REP/COMPANY:	
LEGAL AID REQUEST?	

### **Brief summary of events including current stage of case**

---



---



---



---

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

### **Annex B – Some Latin terms which may be encountered**

Term	Meaning
Ad hoc	for this special purpose
Bona fide	in good faith; genuine
Bona fides	good faith; genuineness
Caveat	a notice or warning
De facto	actual, if not rightful (e.g. the de facto ruler); in fact; actually
Inter alia	among other things
Ipso facto	by that very fact; thereby
Jus sanguinis	acquisition (e.g. of nationality) by descent
Jus soli	acquisition (e.g. of nationality) by birth in a certain territory
Mutatis mutandis	with necessary changes
Obiter dictum	something said by the way, a cursory remark (the plural is obiter dicta)

Pari passu	with equal pace; together
Persona grata	person who is acceptable, especially diplomatically acceptable to a foreign government (the opposite is persona non grata)
Prima facie	at first sight
Ratio decidendi	the reason for a judicial decision
Sine die	without a day (appointed) - of a meeting or a matter indefinitely adjourned
Sine qua non	an indispensable condition
Sui generis	unique
Sui juris	having full legal capacity to act
Ultra vires	beyond one's powers or authority