

Judicial Review Update

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Irrationality and relevant considerations

- *R (D) v Parole Board* [2018] EWHC 694 (Admin)
 - *GCHQ* formulation: decision “so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.”
 - Cat A straight to release
 - Volte face: denial to acceptance but minimization
 - Anxious scrutiny
 - Not irrational

- *R (D) v Parole Board* [2018] EWHC 694 (Admin)
 - Failure to take into account the “80+ potential victims”
 - Relevant considerations: express or necessarily implicit requirement to take into account
 - Permissible considerations- may be taken into account but a failure to take into account only unlawful if such a failure is irrational
 - Should the Parole Board undertaken further inquiry: was that failure irrational? Yes

The *Tameside* duty

- The Court of Appeal endorsed the the summary of the relevant principles in *Plantagenet Alliance Ltd* [2015] 3 All ER 261
 - (1) The obligation on the decision-maker is only to take such steps to inform himself as are reasonable.
 - (2) Subject to an irrationality challenge, it is for the public body and not the court to decide upon the manner and intensity of inquiry to be undertaken.
 - (3) The court should not intervene merely because it considers that further inquiries would have been sensible or desirable.

The *Tameside* duty (2): *Balajigari*

- (4) The Court should establish what material was before the authority and should only quash the decision if no reasonable authority possessed of that material could suppose that the inquiries they had made were sufficient.
- (5) The principle that the decision-maker must call his own attention to considerations relevant to his decision, a duty which in practice may require him to consult outside bodies with particular knowledge or involvement in the case, does not spring from a duty of procedural fairness to the applicant but rather from the public body's duty so to inform himself as to arrive at a rational conclusion.
- (6) The wider the discretion conferred on the decision-maker, the more important it must be that he has all the relevant material to enable him properly to exercise it.

- *R (D) v Parole Board* [2018] EWHC 694 (Admin)
 - Should the Parole Board undertaken further inquiry: was that failure irrational? Yes
- *R (Pharmaceutical Services Negotiating Committee v Secretary of State for Health* [2018] EWCA Civ 1925
 - Duty of inquiry: It is for the decision maker to decide upon the manner and intensity of inquiry to be undertaken. A failure can only be challenged on irrationality grounds

The public sector equality duty

- *Powell v Dacorum BC* [2019] EWCA Civ 23
 - What is required depends on context. Judgments on national policy decisions do not necessarily apply to decisions taken in individual cases
- *Forward v Aldwyck Housing Group Ltd* [2019] EWCA Civ 1334
 - No general rule that a breach of psed means decision must necessarily be quashed.

Legitimate expectation

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- *In the matter of an application by Geraldine Finucane for Judicial review* [2019] UKSC 7
 - where a clear and unambiguous undertaking had been made, the decision-maker giving the undertaking would not be allowed to depart from it unless it was fair to do so
 - *obiter*, it is not prerequisite of a substantive legitimate expectation claim that the person relying on it could show that they had suffered a detriment
 - where political issues overtook a promise given by government, and where contemporary considerations impelled a different course, then, provided a bona fide decision was taken on genuine policy grounds not to adhere to the original undertaking, it was difficult for a person holding a legitimate expectation to enforce compliance with it

- *R (Jefferies) v SSHD* [2018] EWHC 3239
 - Private off-the-record views expressed by the Prime Minister that the second part of the Leveson Inquiry would go ahead cannot give rise to a legitimate expectation
- *R (Alliance of Turkish Businesspeople Ltd) v SSHD* [2019] EWHC 603 (Admin)
 - clear and unambiguous representation and reasonable to rely upon it but justifiable to frustrate the legitimate expectation. The changes in policy pursued legitimate aims in the public interest and were proportionate

Consultation

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- *R (LPHCA) v Transport for London* [2018] EWHC 1274 (Admin)
 - Importance of identifying scope of consultation when assessing whether sufficient reasons had been given for the proposal
 - TfL consulting on taxi licence structure not how much it would raise therefore no need to provide information about how sum had been arrived at.
 - *R (Help Refugees Ltd) v SSHD* [2018] EWCA Civ 2098
 - Consultation on how many unaccompanied asylum-seeking children should be admitted to the UK
 - Legislation set no parameters therefore SSHD had a very wide discretion as to how the consultation was conducted

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- *R (Kohler) v Mayors' Office for Policing and Crime* [2018] EWHC 1881 (Admin)
 - Failure to consider response from one consultee led to decision being quashed
 - *R (Stephenson) v SS for Housing, Communities and Local Government* [2019] JPL 929
 - Application of *National Association of Health Stores* in relation to what is required to be put before decision-maker
 - Consultation document read through the eyes of a reasonable reader

Alternative remedies

- JR by students whose courses had been terminated
- Complaint to the OIA was an adequate alternative remedy to JR even though it was not an identical remedy and it had many advantages over a claim for judicial review
- HC guidance disapproved