

The Fight for Social Justice

Legal Snapshot: Public Law

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Everyone has a right to **justice**
and for their **voice** to be heard

Leigh Day

Access to Justice (1)

R (UNISON) v Lord Chancellor (Equality and Human Rights Commission [2017] UKSC 51

- Facts
 - Fees introduced for Employment Tribunal cases
 - Applied to unequal pay / discrimination / unfair dismissal claims
- Decision
 - Unanimous finding that rules violated common law rights of access to the courts, even where not insurmountable; effectively a restriction on access when not all claimants could afford the fee
 - This was capable of rendering the rules ultra vires (i.e. beyond the scope of the powers under the Act)
 - Also, breach of EU law and discriminatory (as higher fees applied to cases more likely brought by women and people with disabilities)
- Importance
 - Impediment to access to justice requires clear parliamentary authorisation
 - Even then, restriction can be no more than absolutely necessary

Access to Justice (2)

RSPB & others v Lord Chancellor [2017] EWHC 2309 (Admin)

• Facts

- New rules under Aarhus Convention costs cap regime
- Meant the default cap could be varied at anytime; plus financial resources (now mandated to be disclosed on issuing the claim) were not private

• Decision

- Held that application to vary at anytime breached EU law requiring certainty about costs and claims not being “prohibitively expensive” (in the context of ensuring the public is involved in environmental decision-making processes)
- Also, hearings about a claimant’s financial resources (including those of their donors) must be held in private

• Importance

- Key safeguard to access to environmental justice
- Fear of chilling effect on environmental law judicial reviews (such as fracking challenges) hopefully won’t now materialise

Fairness (1) Duty to give reasons

CPRE Kent v Dover District Council [2017] UKSC 79

•Facts

- Grant of planning permission for residential development, some parts of which encroached on an area of outstanding natural beauty (AONB); therefore required an environmental impact assessment
- Issue was that officer recommended approval on a smaller scale (protecting the AONB), whereas committee simply passed it through unchanged; challenge was to whether the committee had given adequate reasons for not following the recommendation

•Decision

- Where there is a legal requirement to give reasons (here under the relevant regulations), an adequate explanation is needed (not just limited to the “main” reasons)
- Public bodies are not under a general common law duty to give reasons, but fairness could in some circumstances require it, particularly where a committee departs from the officer’s recommendation

•Importance

- Could have wider application e.g. if decision-maker asks for views of the public during a consultation, but does not adequately explain why it disagrees with their opinion

Fairness (2) Systems

Howard League for Penal Reform v Lord Chancellor [2015] EWCA Civ 819

•Facts

- New regulations removed legal aid in prison law from claims about treatment in prison, plus some categorisation and parole board matters

•Decision

- Policy unlawful if there was an unacceptable risk of unlawful decision-making i.e. that access to justice will be or is curtailed; highest standards of fairness demanded
- Problem has to be truly systemic (rather than individual) and evidenced
- Question was whether the system itself was inherently unfair, in that it impeded an individual's ability to participate effectively in the decision-making process affecting them; here it was where those prisoners with mental health, learning or other difficulties could not represent themselves

•Importance

- Allows courts not to simply defer to issues of public finance, and to scrutinise systems, even when endorsed by parliament; potential to have ramifications for other government systems e.g. rules surrounding access of foreign nationals to health care

National policy: Air pollution

CLIENT EARTH v Secretary of State for DEFRA [2018] EWHC 315 (Admin)

•Facts

- New national plan to reduce air pollution, in particular nitrogen dioxide
- Did not require plans in local authority areas expected to reduce pollution to acceptable levels through other means by 2021
- Therefore, less onerous measures on those areas and no “clean air zone” (CAZ)

•Decision

- Failure to mandate plans for all areas breached obligation under the EU the Directive to achieve compliance as quickly as possible; and that obligation was not qualified by cost
- CAZ the most effective way of reducing air pollution, so should be rolled out to every area where air pollution is a problem

•Importance

- Litigation at the moment about whether plans to permit development in areas already in exceedance of nitrogen dioxide levels in compatible with the same EU Directive; arguably not, if steps must be taken to achieve compliance as quickly as possible