

The Grounds For Judicial Review

The Grounds for JR

- GCHQ CASE Lord Diplock ultra vires doctrine into three main headings
- **illegality**: the decision maker must correctly understand and apply the law that provides and regulates his decision making power
- **irrationality**: the principles of unreasonableness explained by Lord Greene MR in ASSOCIATED PROVINCIAL PICTURE HOUSES LTD v WEDNESBURY CORPORATION
- **procedural impropriety**: failure to follow important procedural rules, including breach of the rules of natural justice.

GCHQ CASE Lord Diplock

- By 'illegality' as a ground for judicial review, I mean that the decision maker must understand correctly the law that regulates his decision making power and give effect to it. Whether he had or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the State is exercisable.

GCHQ CASE Lord Diplock

- By ‘irrationality’, I mean what can now be succinctly referred to as *Wednesbury* unreasonableness. It applies to a decision which is 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. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer . . .

GCHQ CASE Lord Diplock

- I have described the third head as ‘procedural impropriety’ rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe the procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even though such failure does not involve any denial of natural justice

GCHQ CASE Lord Diplock

- That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of ‘proportionality’ which is recognised in the administrative law of several of our fellow members of the European [Economic] Community . . .

Some Cases



- R v SOMERSET CC Ex Parte FEWINGS
- 120(1)(b) of the Local Government Act 1972, to acquire and manage land for the ‘benefit, improvement or development of their area’.
- Here the Council’s decision was seen as exercising an excess of power as it took into account an irrelevant consideration in its decision, i.e. a moral objection to stag hunting. This could be seen as either an example of Illegality or both Illegality and

Illegality

- Jurisdiction means - ‘authority or power to decide a particular issue or matter’ or, more narrowly, ‘authority or power to embark upon a decision-making process’. For a public body to take a decision without jurisdiction means that it acts ultra vires
- illegality most accurately expresses the purpose of judicial review: to ensure that decision makers act according to the law. (H.Barnett)
- ANISMINIC case
- Misinterpretation of the Law, and cause

Illegality

- R v LORD PRESIDENT OF THE PRIVY COUNCIL EX PARTE PAGE
- The court had no jurisdiction to review a visitor's decision within his jurisdiction, though judicial review might lie where the visitor had acted outside his jurisdiction
- ATTORNEY-GENERAL v FULHAM CORPORATION
- The court ruled that the authority was ultra vires since the Act empowered the authority to provide bathing and washing facilities and providing a laundry was not
- Congreve v Home Office – Tv Licence

Irrationality

Wednesbury unreasonableness

- A person in whom a discretionary power is vested must exercise that power reasonably.
- WEDNESBURY case
- ‘if a local authority came to a conclusion so unreasonable that no reasonable authority could ever come to it, then the courts may interfere’, but he added that to prove that a public authority had acted unreasonably would require something overwhelming

WEDNESBURY

- Lord Greene
- the exercise of a discretion must be real and genuine;
- in exercising a discretion, the decision-maker must have regard to relevant matters and must disregard irrelevant matters;
- a discretion must not be exercised for reasons of bad faith or dishonesty;
- a discretion must be exercised for the purpose for which it was intended.

Irrationality

Wednesbury unreasonableness

- ROBERTS v HOPWOOD
- Discretion of the council was limited by law – it was not free to pursue a socialist policy at the expense of its rate payers.
- Standard of the reasonableness imposed by court is high. Why is that?
- GCHQ Lord Diplock, “ ... 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.”
- R v Broadmoor Special Hospital Authority
ex parte S

Onerous conditions attached to decision

- Decision by authority also might be unreasonable if condition attached to the decision which are difficult and impossible to perform.
- *Pyx Granite* - Lord Denning MR in the Court of Appeal held that planning conditions ‘... *must fairly and reasonably relate to the permitted development*’ and must not be so unreasonable that it can be said that Parliament clearly cannot have intended that they should be imposed
- Decision part good and part bad decision – *Agricultural Horticultural and Forestry*

Error of Law (Error of fact)

- Intervention of the courts to administration
- Error of Law -wrongly interprets a word to which a legal meaning attributed
- Error of Law and Error of Fact
- Error of Fact (reviewable and not reviewable)

White and Collins v Minister of Health[1939]

- Yeats, I, ‘Errors of fact: the role of the courts law’ – example “*A board is empowered (or obliged) to take some action in respect of ‘dilapidated dwelling houses in Greater London.’*”
- When the court considers whether there has been an error of law, it is seeking to discover the correct definition of the legal words in the relevant statute.
- When the court is considering whether there has been an error of fact, the court is trying to determine whether the facts of

Using power for the wrong purpose

- ATTORNEY-GENERAL v FULHAM CORPORATION (above)
- Complimentary to power conferred or using one power for two purposes
- Professor Evans test: ‘What is the true purpose for which the power was exercised? If the actor has in truth used his power for the purposes for which it was conferred, it is immaterial that he was thus enabled to achieve a subsidiary object . . .’
- Wrong motive - *R v Secretary of State for Foreign and Commonwealth Affairs ex parte World Development Movement*

Irrelevant consideration

- Not taking into account relevant consideration or irrelevant consideration playing important role in decision making.
- R v SOMERSET CC Ex P FEWINGS (also appeal said refer to relevant law and should be benefit to public)
- Wheeler v Leicester City Council - Morally justified could not provide law basis
- ROBERTS v HOPWOOD and Bromley London Borough Council v Greater London Council (GLC) cases

Fettering discretion

- An authority will be acting unreasonably where it refuses to hear applications or makes certain decisions without taking individual circumstances into account by reference to a certain policy.
- Lord Reid: ‘The general rule is that anyone who has to exercise a statutory discretion must not “shut [his] ears to the application” . . . There can be no objection to [adopting a policy] provided the authority is always willing to listen to anyone with something new to say.’ - *British Oxygen Co. Ltd v Minister of Technology* (BOC
- *Co. Ltd v Minister of Technology* (BOC

- LAVENDER v MINISTRY OF HOUSING AND LOCAL GOVERNMENT – “It is the minister’s present policy that land should not be released for mineral working unless the Minister of Agriculture is not opposed. In the present case, the agricultural objection has not been waived and the minister has therefore decided not to grant planning permission for the working of the site.”

IMPROPER DELEGATION

- Where Parliament has delegated a function to an administrative authority, the authority should not delegate that function to any other body.
- R v DIRECTOR OF PUBLIC PROSECUTIONS EX PARTE ASSOCIATION OF FIRST DIVISION CIVIL SERVANTS
- CARLTONA LTD v COMMISSIONERS OF WORKS (requisitioning Carltona's property.) - Parliament could not possibly

Other sub-heading

- Failure to act
- Bad Faith – dishonesty
- Lord Macnaghten in Westminster Corporation “It is well settled that a public body invested with statutory powers . . . must take care not to exceed or abuse its powers. It must keep within the limits of the authority committed to it. It must act in good faith. And it must act reasonably. The last proposition is involved in the second, if not in the first”
- **R v Derbyshire County Council, ex p Times Supplements (1990)**