Landmark CHAMBERS

Standing and person aggrieved

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Tests for Standing

- "Sufficient interest" – judicial review
- "person aggrieved" – s288 TCPA 1990
- "victim" – Human Rights Act

The Classic Formulation

R v Monopolies and Mergers Commission, ex parte Argyll Group Ltd 1986 1 WLR 763

> "The first stage test which is applied on the application for leave, will lead to a refusal if the applicant has no interest whatsoever and is, in truth, no more than a meddlesome busybody. If, however, the application appears to be otherwise arguable and there is no other discretionary bar, such as dilatoriness on the part of the applicant, the applicant may expect to get leave to apply, leaving the test of interest or standing to be reapplied as a matter of discretion on the hearing of the substantive application. At this second stage, the strength of the applicant's interest is one of the factors to be weighed in the balance."

Sedley J's view in ***ex parte Dixon*** was that this test contained the following elements:

(a) The threshold at the point of the application for leave is set only at the height necessary to prevent abuse.

(b) To have "no interest whatsoever" is not the same as having no pecuniary or special personal interest. It is to interfere in something with which one has no legitimate concern at all; to be, in other words, a busybody.

(c) Beyond this point, the question of standing has no materiality at the leave stage.

(d) At the substantive hearing "the strength of the applicant's interest is *one* of the factors to be weighed in the balance" : that is to say that there may well be other factors which properly affect the evaluation of whether the application in the end has a "sufficient interest" to maintain the challenge and - what may be a distinct question - to secure relief in one form rather than another.

Constitutional Importance

Lord Diplock in *R v IRC ex parte National Federation for the Self Employed* 1982 AC 617

It would, in my view, be a grave lacuna in our system of public law if a pressure group, like the federation, or even a single public-spirited taxpayer, were prevented by outdated technical rules of locus standi from bringing the matter to the attention of the court to vindicate the rule of law and get the unlawful conduct stopped.

The Attorney-General, although he occasionally applies for prerogative orders against public authorities that do not form part of central government, in practice never does so against government departments. It is not, in my view, a sufficient answer to say that judicial review of the actions of officers or departments of central government is unnecessary because they are accountable to Parliament for the way in which they carry out their functions. They are accountable to Parliament for what they do so far as regards efficiency and policy, and of that Parliament is the only judge; they are responsible to a court of justice for the lawfulness of what they do, and of that the court is the only judge.

Discretion and Standing

In ***R (oao Kides) v South Cambridgeshire DC*** **2003 1 P & CR 19** the Court of Appeal took a wide approach as to whether the claimant could seek to quash a permission allegedly flawed by an error on a specific matter (affordable housing) in which she had no interest.

Person Aggrieved

Leading case, particularly relevant in environmental cases, is ***Walton v Scottish Ministers*** **2012 UKSC 44.**

Lord Hope, in paragraphs 152 and 153, explained the need for an approach which reflected the characteristics of environmental law;

> "The osprey has no means of taking that step on its own behalf, any more than any other wild creature. If its interests are to be protected someone has to be allowed to speak up on its behalf."

"Individuals who wish to do this on environmental grounds will have to demonstrate that they have a genuine interest in the aspects of the environment that they seek to protect, and that they have sufficient knowledge of the subject to qualify them to act in the public interest in what is, in essence, a representative capacity."

Is the Test the Same?

Courts have not given a decisive answer:-

- Paragraph 52 of ***Ashton v Secretary of State*** 2010 EWCA Civ 600
- In ***Walton*** Lord Reed in the Supreme Court considered both tests but could not see any substantial difference; and held that Mr Walton qualified using either test.