

Quasi-judicial review claims and unintended consequences



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Terms of reference – 31 July 2020

- “1. Whether the amenability of public law decisions to judicial review by the courts and the grounds of public law illegality should be codified in statute.
2. Whether the legal principle of non-justiciability requires clarification and, if so, the identity of subjects/areas where the issue of the justiciability/non-justiciability of the exercise of a public law power and/or function could be considered by the Government.
3. Whether, where the exercise of a public law power should be justiciable: (i) on which grounds the courts should be able to find a decision to be unlawful; (ii) whether those grounds should depend on the nature and subject matter of the power and (iii) the remedies available in respect of the various grounds on which a decision may be declared unlawful.”

Note F

These issues affect all cases involving public law decision making, and not simply JRs, since they would modify substantive law. So, they would apply, for example, to the tenant raising as a defence in private law housing proceedings the illegality of a rent increase by the council as in *Wandsworth LBC v Winder* [1985] AC 461.

Alarm bells ringing

- How far does this go?
- Disputes *between* public authorities?
- What about quasi-JR issues? (e.g appeals on a point of law s.204, Housing Act 1996)
- Public law defences

Winder

Boddington (!!)



Disputes between public authorities?

Examples

1) “Ordinary residence” disputes for e.g. social care purposes

- LA v LA

- cross border disputes (see, e.g. *Milton Keynes v (1) Scottish Ministers (2) East Lothian Council*)

2) Homelessness decision to accept an application and then refer to a second LA, where LA wishes to dispute some aspect of the first decision (e.g. eligibility)

R v Slough BC Ex p. Ealing LBC; R (Ealing LBC) v RBK&C

3) Cases where LA needs to JR itself!

- e.g. *R v Bassetlaw DC, ex p. Oxby* [1998] PCLR 283

Quasi-JR claims

- Appeal on a point of law

Examples

Housing Act 1996, s.204 (homelessness appeals in the county court)

A “point of law” includes not only matters of legal interpretation but the full range of issues akin to those which would otherwise be the subject of judicial review:

Runa Begum v Tower Hamlets LBC [2003] UKHL 5; [2003] A.C. 430.

- Implications for devolved issues in Wales (Housing (Wales) Act 2014, Pt.2)

Public law defences

- A tenant is entitled to raise any “conventional public law issue” as a defence to a possession claim
 - Exceptionally valuable for mandatory grounds
 - Extends beyond “core” public authorities to include housing associations and other unusual landlords (e.g. Canal and River Trust)

Unintended consequences?

- Does protecting central government mean harming local government and/or citizens who interact with local government?

Thank you for listening

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