

Judicial Review and Courts Bill

Case Studies – Clause 1

1. Benefits payments unlawfully denied to people with mental health conditions

R (RF) v Secretary of State for Work and Pensions [2017] EWHC 3375 (Admin)

What happened

Despite having been diagnosed with a severe mental health impairment which limited her ability to leave her home, the claimant (RF) was unable to claim the mobility component of the Personal Independence Payment, which was vital for her independence. This was due to guidelines introduced by the Department of Work and Pensions in March 2017.

The claimant's challenge to the Social Security (Personal Independence Payment) (Amendment) Regulations 2017 was successful and the court found that they unlawfully discriminated against people with mental health problems. The regulations were quashed. The Government's initial assessment was that 1.6 million of the main disability benefit claims would need to be reviewed, with around 220,000 people expected to receive more money.

How would Clause 1 of the Bill have affected the outcome of this case

An important feature of this case is that the claimant's individual circumstances had not yet been impacted by the Regulations and did "not add anything to the issue of principle" which the judge had to decide.

This means that the presumption in clause 1 would have applied given that a prospective or suspended quashing order would have been "adequate redress" for the claimant". This would have been problematic for the broader class of PIP claimants with mental health conditions, most of whom would have been unable to bring a claim. A suspended or prospective-only order would have caused systematic unfairness even if it would have offered "adequate redress" for this individual.

2. Attempt by Home Office to deport EU citizens for rough sleeping

R (Gureckis) v Secretary of State for the Home Department [2017] EWHC 3298 (Admin)

What happened

A Home Office policy to remove EU rough sleepers was ruled **unlawful** by the High Court in December 2017. The policy was that rough sleeping could be considered an "abuse of rights" by European Union citizens, making them liable for deportation. The court determined that rough sleeping was not an abuse of rights and that this policy discriminated against the homeless. The policy was quashed. However, prior to the case, at least one of the claimants had already had the removal action against him withdrawn by the Home Office. The judge said the case was more generally about the legality of the policy and not the individual claimants.

How would Clause 1 of the Bill have affected the outcome of this case

Given that the impact on some of the claimants was minimal, a suspended quashing order could have been granted, leaving the wider pool of homeless EU citizens at risk of being issued with a removal notice in the period of time where the quashing order was suspended. They would have been liable to deportation

merely for being homeless. If a prospective-only quashing order had been issued, it would not have assisted any homeless EU citizens who had already faced removal action in the past.

3. Unlawful closure of a children's cardiac surgery clinic

R (Save our Surgery Ltd) v Joint Committee of Primary Care Trusts [2013] EWHC 1011 (Admin)

What happened

The claimant was a group dedicated to preventing the closure of a clinic in Leeds that provided surgery to children with serious cardiac problems. The court held that the NHS Committee's decision to authorise the closure was unlawful due to procedural unfairness and omissions of key considerations in the consultation leading to the closure. The decision to close the clinic was quashed.

Paediatric heart surgeries resumed at the Leeds clinic in early April 2013, shortly after the quashing order was granted. In the span of just 12 days in which the clinic was shut for surgeries due to the closure, it was [reported by the BBC](#) that ten seriously ill children were forced to be transferred to other hospitals – as far as Newcastle and Birmingham – bringing considerable difficulty for children and parents.

How would Clause 1 of the Bill have affected the outcome of this case

A suspended order could have been granted in this case. Firstly, at the time of the case, the Health Secretary was already conducting a full merits review into the faulty consultation process which was considering issues afresh and was set to make new recommendations regarding clinic closures. Given that this second review might still have recommended the closure of the clinic, a suspended order may have been thought appropriate until the time of that report. Secondly, the claimant was neither the actual Leeds clinic nor a child being denied surgery there, so a suspended order might have been "adequate redress" for the claimant.

If a suspended order had been granted, the clinic closure would have been far longer than 12 days, putting more families through these difficulties.

4. Innocent NHS staff at risk of losing pensions

R (British Medical Association) v Secretary of State for Health and Social Care [2020] EWHC 64 (Admin)

What happened

In 2019, an NHS regulation introduced a power to suspend or withhold payments of NHS pensions where an employee had been charged with an offence. There was no right of appeal and the suspension would not terminate even if the person charged with an offence was then acquitted in court. The power was never actually exercised, but the British Medical Association (the claimants) brought this case as a matter of principle to ensure that innocent medical staff would not be denied a pension simply for being charged with an offence. The Regulations were found to be unlawful and were quashed.

How would Clause 1 of the Bill have affected the outcome of this case

Given that the power had never been exercised and claimants had not been impacted personally, the court may have issued a prospective-only or suspended quashing order. If a suspended quashing order had been issued, giving time to the Health Secretary to consult and lay new regulations, in the intervening period employees would have been captured by the unlawful regulations and there would have been no bar on ministers exercising the power to deny them access to their pensions.

5. Risk of delayed burial in Jewish community

R (Adath Yisroel Burial Society and Ita Cymerman) v HM Senior Coroner for Inner North London [2018] EWHC 969 (Admin)

What happened

The Senior Coroner for Inner North London had a policy that deceased persons would not be prioritised for burial on religious grounds, despite some religions – such as Orthodox Judaism – requiring burial within twenty-four hours. Instead, all deceased were treated on a “first come, first served” basis. The court quashed the policy for being unlawfully discriminatory and infringing upon the right to freedom of religion.

How would Clause 1 of the Bill have affected the outcome of this case

The first claimant was a charity, and the second claimant was an Orthodox Jewish woman. The second claimant was not at risk at dying in the immediate term, she was not terminally ill. There was no claimant representing a deceased against whom this policy had been exercised.

Given that the policy had not been applied to the claimants, under Clause 1, the court might have thought that it would be “adequate redress” to grant a prospective-only quashing order or a suspended quashing order to afford time to the coroner to amend the policy. However, on the latter option, any Orthodox Jewish person who died in the area would have seen their burial delayed beyond what their religious beliefs permitted because the pre-existing unlawful policy would have been applied.