



Blackstone
CHAMBERS

A YEAR IN JUDICIAL REVIEW

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Use this 50-case selection as a *five-minute check* of how closely you were paying attention in the year 1 October 2010 to 30 September 2011:

October 2010:

R (King) v Secretary of State for Justice [2010] EWHC 2522 (Admin); [2011] 3 All ER 776 (13.10.10 DC): the judicial review Court provided the HRA:ECHR Art 6 “independent tribunal” needed for prison governor disciplinary decisions.

R (British Gurkha Welfare Society) v Ministry of Defence [2010] EWCA Civ 1098 (13.10.10 CA): Gurkha retirement pension arrangements did not violate HRA:ECHR Art 14.

R (London Reading College Ltd) v Secretary of State for the Home Department [2010] EWHC 2561 (Admin); [2010] ELR 809 (18.10.10 Neil Garnham QC): revocation of a language college licence was procedurally unfair and an HRA:ECHR Art 1P violation, given the failure first to put the criticism.

November 2010:

Manchester City Council v Pinnock [2010] UKSC 45; [2010] 3 WLR 1441 (3.11.10 SC): HRA:ECHR Art 8 meant proportionality was relevant to Housing Act 1996 s.143D(2) possession orders.

R (Royal College of Nursing) v Secretary of State for the Home Department [2010] EWHC 2761 (Admin); [2011] UKHRR 309 (10.11.10 Wyn Williams J): HRA:ECHR Art 6 required that listing to prevent a person from working with children or vulnerable adults have an advance right to make representations.

R (Petsafe Ltd) v Welsh Ministers [2010] EWHC 2908 (Admin); [2011] Eu. L.R. 270 (16.11.10 Beatson J): the Welsh ban on electric-shock dog collars was not disproportionate or unreasonable.

R (Kaur) v Institute of Legal Executives Appeal Tribunal [2010] EWHC 3321 (Admin); [2011] ACD 25 (23.11.10 Foskett J): the Institute of Legal Executives was a public authority amenable to judicial review.

R (Zagorski) v Secretary of State for Business Innovation and Skills [2010] EWHC 3110 (Admin); [2011] HRLR 6 (29.11.10 Lloyd Jones J): the non-intervention to prevent export of sodium thiopental used in US executions did not violate EU or common law fundamental rights.

December 2010:

R (Woolas) v Parliamentary Election Court [2010] EWHC 3169 (Admin); [2011] 2 WLR 1362 (3.12.10 DC): the Parliamentary Election Court was amenable to judicial review.

Principal Reporter v K [2010] UKSC 56; [2011] 1 WLR 18 (15.12.10 SC): a phrase was to be read-in, under HRA s.3, to the Children (Scotland) Act 1995 to secure HRA:ECHR Art 8-compatibility of the Scottish children’s hearing system.

Trim v North Dorset District Council [2010] EWCA Civ 1446; [2011] 1 WLR 1901 (20.12.10 CA): a claim form action for declarations as to the legality of a breach of condition notice was an abuse of process as it should have been challenged promptly by judicial review.

R (Ali Zaki Mousa) v Secretary of State for Defence [2010] EWHC 3304 (Admin); [2011] UKHRR 268 (21.12.10 DC): the refusal to announce a further comprehensive public inquiry into British military ill-treatment of detainees in Iraq was lawful.

R (Humberstone) v Legal Services Commission [2010] EWCA Civ 1479; [2011] 1 W.L.R. 1460; [2011] UKHRR 8 (21.12.10 CA): HRA:ECHR Art 2 only applied to a death in state-care inquest where there was an arguable substantive Art 2 violation.

January 2011:

Bank Mellat v HM Treasury [2011] EWCA Civ 1; [2011] 2 All ER 802 (13.1.11 CA): a bank's designation under the Financial Restrictions (Iran) Order 2009 was lawful and procedurally fair.

February 2011:

R (FZ) v Croydon London Borough Council [2011] EWCA Civ 59; [2011] 1 FLR 2081 (1.2.11 CA): guidance on the approach to judicial reviews of local authority age assessments, with appropriate contested factual hearings.

R (Luton Borough Council) v Secretary of State for Education [2011] EWHC 217 (Admin); [2011] ELR 222 (11.2.11 Holman J): the halting of outline-approved school building projects was unlawful for non-consultation of affected local authorities and breach of statutory equality duties.

R (Bourgass) v Secretary of State for Justice [2011] EWHC 286 (Admin) (18.2.11 Irwin J): prison segregation safeguards plus judicial review sufficed to satisfy HRA:ECHR Art 6.

Hounslow London Borough Council v Powell [2011] UKSC 8; [2011] 2 WLR 287 (23.2.11 SC): guidance on the HRA:ECHR 8 proportionality inquiry in introductory tenancy/homelessness possession proceedings.

March 2011:

R (Negassi) v Secretary of State for the Home Department [2011] EWHC 386 (Admin); (4.3.11 Collins J): the failure to implement asylum-seekers' EU Directive right to work was not so manifest and grave as to give rise to a state compensation liability.

R (MN (Tanzania)) v Secretary of State for the Home Department [2011] EWCA Civ 193; [2011] 2 All ER 772 (4.3.11 CA): anxious scrutiny irrationality was the test for judicial review of a decision refusing to treat further representations as a 'fresh claim' for asylum.

R (BP) v Secretary of State for the Home Department [2011] EWCA Civ 276 (17.3.11 CA): judicial review could only be determined substantively on the papers (CPR54.18) with consent of all the parties.

Mayor of London v Haw [2011] EWHC 585 (QB) (17.3.11 Wyn Williams J): a possession order and injunction to prevent protesters camping in Parliament Square were proportionate.

Lumba v Secretary of State for the Home Department [2011] UKSC 12; [2011] 2 WLR 671 (23.3.11 SC): immigration detention under an undisclosed policy and incompatible with a published detention policy was unlawful.

R (Buglife) v Medway Council [2011] EWHC 746 (Admin); [2011] Env LR 27 (30.3.11 HHJ Thornton QC): after the ECJ case of *Uniplex* the CPR54.5 promptness requirement was no longer applicable in an environmental case.

April 2011:

Secretary of State for the Foreign Office and Commonwealth Affairs v Maftah [2011] EWCA Civ 350 (13.4.11 CA): anti-terrorism asset-freezing decisions did not constitute a determination of civil rights or obligations under HRA:ECHR Art 6.

R (Moos) v Commissioner of Police of the Metropolis [2011] EWHC 957 (Admin); [2011] UKHRR 851 (14.4.11 DC): police containment action at the G20 protest was unlawful.

H & L v A City Council [2011] EWCA Civ 403; [2011] UKHRR 599 (14.4.11 CA): the council's blanket policy of disclosure on indecent assault convictions was unfair and disproportionate.

May 2011:

R (Evans) v Secretary of State for Justice [2011] EWHC 1146 (Admin); [2011] 3 All ER 594 (12.5.11 DC): Funding Code restrictions on legal aid for public interest judicial reviews were unlawful having been informed by irrelevancies.

Re McCaughey & Quinn [2011] UKSC 20; [2011] 2 WLR 1279 (18.5.11 SC): the investigative standards of HRA:ECHR Art 2 could apply to an inquest in relation to a pre-HRA death.

R (GC) v Commissioner of Police of the Metropolis [2011] UKSC 21; [2011] 1 WLR 1230 (18.5.11 SC): indefinite police retention of DNA data was HRA:ECHR Art 8-incompatible but a lawful policy was consistent with the statutory scheme so a declaration of incompatibility was not needed.

R (Bashir) v Independent Adjudicator [2011] EWHC 1108 (Admin) (25.5.11 HHJ Pelling): the Independent Adjudicator had unlawfully upheld a prison disciplinary charge (against a fasting prisoner for failure to provide a urine sample) without adequately considering HRA:ECHR Art 9 issues.

R (Shoosmith) v Ofsted [2011] EWCA Civ 642; [2011] BLGR 649 (27.5.11 CA): the statutory direction requiring removal of a Director of Children's Services and her consequential dismissal were unlawful due to procedural unfairness.

June 2011:

R (E) v Director of Public Prosecutions [2011] EWHC 1465 (Admin) (10.6.11 DC): the decision to prosecute a 14 year-old for alleged sexual abuse of her two younger sisters was

procedurally flawed for failure properly to take account of a multi-agency group recommendation.

R (Murray) v Lord Chancellor [2011] EWHC 1528 (Admin) (16.6.11 DC): the closure of Sittingbourne magistrates' court was lawful.

R (Sinclair Collis Ltd) v Secretary of State for Health [2011] EWCA Civ 437 (17.6.11 CA): the ban on tobacco vending machines was proportionate.

R (Gaunt) v Office of Communications [2011] EWCA Civ 692; [2011] EMLR 28 (17.6.11 CA): Ofcom's finding of a Code breach by a radio interviewer was HRA:ECHR Art 10-compatible.

R (Cart) v Upper Tribunal [2011] UKSC 28; [2011] 3 WLR 107 (22.6.11 SC): the Upper Tribunal's refusals of permission to appeal were judicially reviewable on second-tier appeals grounds.

R (Bhutta) v HM Treasury [2011] EWHC 1789 (Admin) (27.6.11 Mitting J): absent the applicability of HRA:ECHR Art 6, the CPR79 express closed process for asset-freezing directions was lawful and applicable.

R (G) v X School Governors [2011] UKSC 30; [2011] 3 WLR 237 (29.6.11 SC): a teacher's school disciplinary hearing was not a determination of civil rights or obligations for HRA:ECHR Art 6 purposes.

July 2011:

R (McDonald) v Kensington & Chelsea Royal London Borough Council [2011] UKSC 33 (6.7.11 SC): the substituted provision of incontinence pads instead of an overnight carer was proportionate under HRA:ECHR Art 8.

R (Kuteh) v Upper Tribunal [2011] EWHC 2061 (Admin) (8.7.11 Wilkie J): the First Tier Tribunal's failure to refer to crucial evidence satisfied the second-tier appeals test for a *Cart* judicial review.

R (U & Partners (East Anglia) Ltd) v Broads Authority [2011] EWHC 1824 (Admin) (13.7.11 Collins J): the discretionary delay rule in CPR54.5 was too uncertain to apply in an EU Directive-transposition case.

R (Huitson) v Revenue & Customs Commissioners [2011] EWCA Civ 893 (25.7.11 CA): retrospective provisions in the Finance Act 2008 were proportionate under HRA:ECHR Art 1P.

R (Bahta) v Secretary of State for the Home Department [2011] EWCA Civ 895 (26.7.11 CA): revisiting *Boxall*, costs orders were apt where the SSHD had agreed consent orders (for so-called 'pragmatic' reasons) in judicial reviews preceded by adequate letters before claim.

August 2011:

R (BB (Algeria)) v Special Immigration Appeals Commission [2011] EWCA Civ 2129 (2.8.11 DC): HRA:ECHR Art 6 did not apply to SIAC bail hearings.

Public & Commercial Services Union v Minister for the Civil Service [2011] EWHC 2041 (QB) (10.8.11 McCombe J): reduced civil service redundancy and early retirement arrangements were a proportionate interference with HRA:ECHR Art 1P rights.

R (Infinis Plc) v Gas & Markets Authority [2011] EWHC 1873 (Admin) (10.8.11 Lindblom J): an unlawful refusal of renewables electricity accreditation was a violation of HRA:ECHR Art 1P warranting a compensatory order for just satisfaction.

September 2011:

R (Castle) v Commissioner of Police for the Metropolis [2011] EWHC 2317 (Admin) (7.9.11 DC): police containment of child demonstration participants was lawful.

R (DL) v Newham London Borough Council [2011] EWHC 1890 (Admin) (7.9.11 Charles J): an adoption placement termination violated the procedural requirements of HRA:ECHR Art 8 but did not attract just satisfaction.

R (Macrae) v Herefordshire District Council (Case No: CO/9816/2010) (8.9.11 David Elvin QC): the CPR54.5 promptness requirement remained valid (despite *Uniplex*) in cases not raising EU issues.

* This is a paper for the Public Law Project's Judicial Review Conference at Herbert Smith on 13 October 2011.

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