



Knowledge: Where others went wrong – key judicial review cases

To reduce the chances of a judicial review, it's worth examining the precedents. Here are nine of the most instructive from the last fifteen years. Click on their titles for the judges' decisions.

- [R \(ex parte Nash\) v London Borough of Barnet](#)

A local campaigner challenged the council's decision to outsource £470m of services. The judge rejected the challenge because it had not been made early enough. The Court of Appeal upheld this judgment, but it added that the council had not done enough to seek residents' opinions about the outsourcing.

Significance:

- first judicial observations on the Best Value duty to consult
- proposals to outsource at a strategic level almost certainly require adequate consultation

- [R \(ex parte LH\) v Shropshire County Council](#)

The council held a consultation on the policy of 'individualised' budgets, meaning disabled people (such as LH) could choose their own form of social care. It held a second consultation, which made it clear that the policy would involve the closure of some (unspecified) day centres. The council then closed Hartleys day centre in Shrewsbury. The court rejected a challenge from LH, but the Court of Appeal ruled that a consultation into the specific closure of Hartleys should have been held.

Significance:

- even well-conducted consultations, if their scope isn't wide enough, can lead to unlawful decisions
- for public bodies managing the closure of facilities, specific proposals must be consulted upon

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- R (ex parte the Partingdale Lane Residents Association) v London Borough of Barnet

In line with a commitment he had made in his election manifesto, a new cabinet member instructed officers to prepare traffic orders to re-open Partingdale Lane to through traffic, and to carry out associated consultations. In speeches and emails, the councillor stated that the lane ‘will be re-opened’. The claimants argued that the consultation had been pre-determined. They won.

Significance:

- this is a clear case of pre-determination and shows how careful elected members must be, especially with manifesto commitments
- the court ruled that the Gunning Principles applied to statutory consultation requirements
- the case illustrates the evidentiary value of emails etc. in establishing that the decision-maker had made up their mind.

- The Royal Brompton Hospital v The Joint Committee of PCTs

The NHS was seeking to rationalise where children’s cardiac surgery took place. The Royal Brompton Hospital was excluded from all four configuration options published in the consultation, and it therefore sought a judicial review of the exercise. The judge initially found for the hospital, having been persuaded that deficiencies in the way the NHS had gathered and presented information about the hospital’s research capability would have misled consultees. This decision was reversed by the Court of Appeal.

Significance:

- although the hospital eventually lost, the case shows that disappointed consultees can make an argument if ‘option development’ processes are seriously flawed
- this shows the advantages of offering consultees the opportunity to advocate solutions other than the stated ones
- It dissuades judicial review applicants from involving the courts where the consultation process itself is the best solution

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- Draper v Lincolnshire County Council

Lincolnshire Council proposed to reduce its libraries from 44 to 15, in order to cut its library budget by two million pounds. The consultation made it clear that whilst the council was not open to influence about the number and definition of the libraries it would retain, it was open to considering other options. Campaigners challenged the subsequent decision, alleging pre-determination, and also that the council had failed to consider an expression of interest submitted by Greenwich Leisure Ltd, claiming that it could save £1.8m. The campaigners won the case.

Significance:

- this centres on the provisions of the Localism Act
- it demonstrates the perils of a single option consultation

- R (ex parte Moseley) v London Borough of Haringey

The Welfare Reform Act 2012 requires English councils to devise a Council Tax Reduction Scheme, and to consult the public on it. After a challenge to Haringey Council had failed at the Court of Appeal, it went to the Supreme Court which decided that the council had not provided people with enough information about the true range of options available.

Significance:

- the first consultation case to go to the Supreme Court, with a resounding endorsement of the Gunning Principles
- the court rejected the assertion that consultees could have been presumed to have known what the other options may have been
- the case edges the law further towards a requirement to tell the public more about discarded options.

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- Kendall v Rochford DC & DCLG

Mrs Kendall challenged a council decision, arguing that the council had failed to comply with its own 'Statement of Community Involvement', and failed to observe Article 6 of the Strategic Environment Assessment Directive. The judge ruled that the council had met its statutory requirements, but he also said that the council had been over reliant on its website to reach key stakeholders.

Significance:

- the case explores the role of a council's Statement of Community Involvement
- it was a landmark decision on consultation methods: some consultation exercises must not be over reliant on new technology
- It demonstrates the relevance of Aarhus Convention principles¹ (as implemented through EU directives and UK regulations)

- R (ex parte Capenhurst) v Leicester City Council

Six charities challenged the council's decisions to terminate their funding. Although the council did undertake a consultation, it claimed that this was not legally necessary as the relationship with the charities was contractual. The court rejected this and held that once a consultation is carried out, it must act fairly (ie consistent with Sedley/Gunning) and in this case the council had not explained the criteria for terminating funding well enough to the charities.

Significance:

- a reminder that fairness in funding decisions or cutting services requires attention to detail.

¹ Established by UNECE (the United Nations Economic Council for Europe) the principles empower people with rights to access easily information and participate effectively in decision-making

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- Diocese of Menevia v City and County of Swansea Council

A successful challenge to the council's plans to withdraw support to families whose children travelled to faith schools. The court found the council guilty of "indirect discrimination".

Significance:

- the case demonstrates the risk of "desktop only" impact assessment exercises
- you cannot make assumptions about who might be impacted
- If found guilty of discrimination, there's doubt over whether you can re-consult and make decisions on the same subject (as of January 2017, this is yet to be tested in court).

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