

Citizen and state. judicial review



**ASSIGN
BUSTER**

This problem question necessitates a discussion surrounding the area of Administrative Law in particular Judicial Review. In order to properly advise Electruc4u as to the grounds they may have for challenging the decision made by the actions of the SBQAA by way of judicial review, one must first establish what judicial review is, and whether it could be a course of action available in this situation. Judicial Review is the practice where the courts are able to examine the decision making processes of public authorities and officials. Judicial review has been developed to ensure that the public bodies which exercise law making power or adjudicatory powers are keeping within the margins of their conferred power. It is important to point out that Judicial Review is not an appeal, but a separate process; an application to the courts to review a decision. The distinction between review and appeal is important to understand and was exemplified by Lord Greene MR in *Associated Provincial Picture Houses Ltd v. Wednesbury Corpn.*

Judicial Review must be used as a remedy when challenging the decision of a public body, as in *O'Reilly v Mackman*. In this particular case it was held that to use the private law process when Judicial Review was available, it was consequently an abuse of process. However Lord Diplock expressed this was a general rule and there would be some exceptions; which were later developed from precedent. Parpworth explains, The House of Lords in *Mercury Communications Ltd v D. G of Telecommunications* took a relaxed approach to the rule in *O'Reilly* because of the need for flexibility rather than compartmentalizing cases as either public or private law matters.

As a claim for Judicial Review can only be made against a public body, it is important to distinguish whether a body is open to be able to make a claim

for judicial review essential. For e. g. in R v Panel on Takeovers and Mergers ex p Datafin Plc the Court of Appeal expressed that an organisation can be recognised as a public body due to the nature of the power it exercises and introduced the ‘but for’ test. This can be contrasted with companies which may still satisfy the ‘but for’ test, but an application for Judicial Review will be defeated if they are a private body. In contrast to this case it can be established that non public bodies cannot be open to make a claim for judicial review as can be shown in R v. Disciplinary Committee of the Jockey Club ex p Aga Khan the court held that the matter was of a contractual sort and therefore judicial review could not be used. Judicial review primarily sets out to not decide whether a decision made is right or wrong but rather with the process used to reach that decision, this was noted in the case Chief Constable of the North Wales Police v. Evans.

There are different grounds for review, which were established by Lord Diplock in the case of Council of Civil Service Unions v. Minister for the Civil Service the grounds include the notions of illegality, irrationality, proportionality and procedural impropriety. In regard to the question Robert and Lou would have to assess whether any of the above grounds would apply to them. The first ground to consider would be illegality, whereby if the public authority exceeds the limits given to it, it will be guilty of acting illegally. In Vine v. National Dock Labour Board the court held that Vine’s dismissal was illegal as the powers involved were non-delegable. The second ground for review is irrationality, according to Lord Diplock: ‘Irrationality... applies to a decision which is so outrageous in its defiance of logic or of

accepted moral standards that no sensible person who had his mind to the question to be decided could have arrived at it’.

The term irrationality is derived from *Associated Provincial Picture Houses Ltd v. Wednesbury Corpn* it is often panned ‘Wednesbury unreasonableness’ Similarly *Electrucs4u* would be unable to apply for judicial review under the irrationality ground as it is not so much of an outrageous action as to not ever expect it from occurring. Such cases which have been successful in using irrationality as a claim for judicial review are: *Hall & Co Ltd v. Shoreham-by-Sea UDC* and *Backhouse v. Lambeth London Borough Council*.

Proportionality is closely linked to irrationality and has only recently been accepted in UK courts due to the Human Rights Act 1998 and the European Communities Act 1972. ‘This principle often entails a balancing exercise that requires a court to ask whether the means used to achieve a particular end are justified relative to the impact on an individual’s fundamental rights’. The ground of proportionality can be reflected in *R v. Secretary of State for the Home Department, ex p Brind* Similarly in *R (on the application of Daly) v. Secretary of State for the Home Department* the courts held that when considering what is a breach of someone’s human right the court must go beyond rational and consider what is proportionate. ADD IN HERE APPLY BIT TO QUESTION.

Finally the last ground to review is procedural impropriety, if the procedures prescribed by the statute have not been followed accordingly or if the rules of natural justice have not been adhered to. ‘There are two established rules of natural justice: the ‘rule against bias’ and the ‘duty to hear the other

side' alternatively known as the 'duty to act fairly' The test for bias can be reviewed in the case of Porter v. Magill Usually the rules of natural justice were not looked upon as being important, however this was overturned in the House of Lords decision in Ridge v. Baldwin an individual's rights and freedoms must possess a high level of fairness.