

W201 The Individual and the State

Judicial Review - Problem sheet

1. MORSE a senior police officer was discovered inebriated on duty in an Oxford pub. The local police authority met and under their statutory power to dismiss “any constable found unfit for his post” sacked him and appointed FROST in his place. MORSE was not told of the meeting and had no opportunity to give his side of the story.

Can MORSE challenge the decision by judicial review and if so what remedies do the courts offer?

2. OFFGAS is a body created by statute to regulate the supply of gas by existing gas producers. The regulator SPARK who holds shares in an electricity company throws open competition to supply gas to both gas and electricity companies. SCARGILL who owns a coalmine and wants to supply gas too consults you.

Can SCARGILL challenge the decision of SPARK by judicial review and if so what remedies do the courts offer?

3. Which ground are the existence of duties and discretions most relevant to?

See if you can identify in each of these examples whether you are dealing with a duty or a discretion.

1. London County Council is **required** to provide public transport within its area.

2. London County Council **shall** provide public transport within its area using forms of transport it considers **suitable**..

3. London County Council **may** provide public transport in its area using forms of transport it considers **appropriate**.

4. London County Council **shall** provide transport in its area and **may** use buses trams or monorails for this purpose.

4. CASTERBRIDGE BOROUGH COUNCIL have a statutory power which states that they shall censor films according to unsuitable pornographic content. They ban the showing of three films by the director HITCHCOCK to elderly persons (over the age of 50) to avoid causing unnecessary trauma to senior citizens. GAUMONT (who owns the local cinema) in accordance with a procedure previously adopted had offered to give the Council a free showing before their meeting of all three of HITCHCOCK'S films to demonstrate they had no pornographic content at all. The Council committee refused the offer. Due to oversight the Council forgot to inform GAUMONT of their decision till the day before the first HITCHCOCK film was to feature. He lost £5,000 in wasted advertising and lost revenue.

Can GAUMONT challenge the decision by judicial review or recover his £5,000? If so what remedies do the courts offer?

5. Twins JOHN and JANE pass the entrance exam to St Trinians a prominent fee-paying school. Later their places are withdrawn on the grounds of their sexual orientation although they are not told the reason. Both settle happily at their local comprehensive. Three months later the local lesbian and gay rights group hear of the case. They consult you.

Can the local gay and lesbian rights group challenge the decision of the school by judicial review and if so what remedies do the courts offer?

Would it make any difference to your answer if JOHN and JANE had been offered state funded places under an assisted places scheme.