



Children & Trafficking Seminar: Public Law for Criminal Practitioners

Tuesday 29 November 2022



GARDEN COURT CHAMBERS



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Judicial Review and other claims in criminal proceedings

Jodie Blackstock, Garden Court Chambers

29th November 2022



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Judicial Review

- Not an appeal – not for the Court to ask if it would take that decision, but whether the decision was open to the decision maker on public law grounds (irrationality, illegality and/or procedural impropriety)
- Irrationality: Took into account irrelevant considerations, failed to take into account relevant considerations, so unreasonable no reasonable person could have reached it (*Wednesbury*)
- Not a case stated – preference to use this route where available
- Against? the CPS, Police, Courts (Magistrates and Crown Court on appeal from Magistrates), Ministry of Justice (prison or procedural policy)
- Outcome sought? Change in decision or policy



Civil action in tort against the police

- False imprisonment
 - Assault and battery
 - Trespass to goods and property
 - Negligence
 - Malicious prosecution
 - Misfeasance in public office
 - Misuse of personal data
-
- Outcome sought? Compensation for damage caused – basic damages for loss, suffering, distress, inconvenience, personal injury, special damages, aggravated and exemplary damages



Civil claim under Human Rights Act

- Article 3 duty not to inflict inhuman or degrading treatment
 - Article 3 positive obligation to protect by way of proper legal system
 - Article 3 positive obligation to effectively investigate complaint of crime
 - Article 5 right to liberty – length of detention in police station, custody cells, prison
 - Article 6 right to a fair trial – can largely be raised on appeal in substantive criminal proceedings
 - Article 8 right to privacy in relation to retention of data
 - Articles 9,10,11 freedom of conscience, speech, assembly in the context of protests
 - Article 13 right to an effective remedy
 - Article 14 right not to be discriminated against in any of the above claims
-
- Cross over with torts, but can fill in the gaps where torts do not reach
 - Outcome sought? Compensation and declaration



Judicial review of decision to charge

- Very high threshold to obtain a review
- Grave abuse of power or a clear breach of the police or prosecuting authority's settled policy
- Alternative remedy – defence at trial, abuse of process, appeal
- *R. v DPP Ex p. Kebilene* [2000] 2 A.C. 326 (absent dishonesty/mala fides/exceptional circumstance” decisions by the DPP to consent to a prosecution not amenable to JR)
- BUT case law seemed to lower standard since – see *R (Campaign Against Anti-Semitism) v DPP* [2019] EWHC 9 (Admin) referring to all decisions
- Flawed decision making can lead to successful review: *R (E) v DPP* [2011] EWHC 1465 (Admin) (but, more a decision not to give reasons?)
- Focus on application/misapplication of policy



Judicial Review of decision *not* to charge

- Cases may arise where want police and CPS to look at another perpetrator but refuse to do so
- Again, have to show decision not to prosecute was because of some unlawful policy, or because the DPP failed to act in accordance with the settled policy or guidelines (*R v Chief Constable of Kent Ex p. L*; *R. v DPP Ex p. B* [1993] 1 All E.R. 756)
- Or the decision was perverse (irrational): *R. v DPP Ex p. Chaudhary* [1995] 1 Cr. App. R. 136
- Where here has been a review – careful, thorough and independent – harder to challenge
- BUT standard should not be set too high as may be the only means of challenge
- Principles summarised in *R (Campaign Against Anti-Semitism) v DPP* [2019] EWHC 9 (Admin) at para 15
- Will be deference to specialist prosecutors – but must follow their own guidance



Guidance may be key – failure to follow policy or policy flawed

- Open to JR if decision made regardless of or contrary to policy: *R v Chief Constable of Kent and Another ex parte L, R v DPP ex parte B* [1991] 93 Cr App R 416
- Code for Crown Prosecutors – evidential and public interest threshold. Have the questions been approached properly? Merits-based analysis, not predictive process
- Standard is “*an objective, impartial and reasonable jury or bench of magistrates or judge hearing a case alone, properly directed and acting in accordance with the law, is more likely than not to convict the defendant of the charge alleged.*” Lower standard than the criminal standard of proof at trial.
- What other Guidance applies to case? E.g. Youth Offenders - needs decision by Youth Offender Specialist <https://www.cps.gov.uk/prosecution-guidance>
- *R. (on the application of Robson) v Crown Prosecution Service* [2016] EWHC 2191 (Admin) (improperly applied Adult Conditional Cautions guidance)
- *Cf R (End Violence Against Women Coalition) v DPP* [2021] EWCA 350: *amendments did not undermine the merits-based rather than bookmaker’s approach*



Reasons

- No *duty* to give reasons – but caselaw suggests trend towards procedural fairness to be able to decide whether to challenge: *Independent Assessor v Michael O'Brien, Vincent Hickey, Michael Hickey* [2004] EWCA Civ 1035
- Decisions should ask the right questions and be properly informed, although "*decision letters should be read in a broad and common-sense way, without being subjected to excessive or overly punctilious textual analysis.*" *R (Campaign Against Anti-Semitism) v DPP*
- "*It must, of course, be for the Crown Prosecution Service to decide upon the type of review of the decision that is made. Some cases will call for very detailed review; others can be dealt with in short order.*" *L v DPP*
- Suggests adequate reasoning is required
- Pre-action protocol: Paragraph 23(b) in reply, a fuller explanation for the decision should be given if considered appropriate to do so





Judicial Review for Criminal Practitioners

Challenging Decisions to Prosecute

Jennifer Twite, Garden Court Chambers

29th November 2022



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CPS Decisions

- Are amenable to judicial Review
- It is a measure of last resort, and it is a high bar
- There are few reported cases – and most are unsuccessful.
- The focus of the court is usually on whether the CPS have followed their own policies.

R v DPP, ex p. C [1995] 1 Cr App R 136;

R v DPP, ex p. Manning [2001] QB 330;

R v Chief Constable of Kent, ex p. L; *R v DPP, ex p. B* (1991) 93 Cr App R 416).

In *R(E) v DPP* [2011] EWHC 1465(Admin) the Defendant successfully challenged the decision to prosecute, as the decision making was flawed, as it was unclear whether the CPS had properly taken into account a multi-agency report stating it was not in the victims' best interests to prosecute.



Relevant Policies

Code for Crown Prosecutors

CPS Legal Guidance on Human Trafficking, Smuggling and Slavery
[Modern Slavery, Human Trafficking and Smuggling | The Crown Prosecution Service \(cps.gov.uk\)](#)

The Home Office Guidance on Criminal Exploitation of Children and Vulnerable Adults: County Lines
[Criminal exploitation of children and vulnerable adults: county lines - GOV.UK \(www.gov.uk\)](#)

CPS Legal Guidance on Decision Making in Gang-Related Offences
[Gang related offences - Decision making in | The Crown Prosecution Service \(cps.gov.uk\)](#)

CPS Legal Guidance on Prosecuting Children
[Youth Offenders | The Crown Prosecution Service \(cps.gov.uk\)](#)



CPS Guidance for MSA Cases

Four Stages for Victims of Trafficking in the Full Code Test in the Code for Crown Prosecutors:

1. Is there a reason to believe that the person is a victim of trafficking or slavery?
2. Is there clear evidence of a credible common law defence of duress?
3. Is there clear evidence of a statutory defence under Section 45 of the Modern Slavery Act 2015?
4. Is it in the public interest to prosecute? This must be considered even where there is no clear evidence of duress and no clear evidence of a s45 defence or where s45 does not apply (because the offence is excluded under Schedule 4). Prosecutors should consider all the circumstances of the case, including the seriousness of the offence and any direct or indirect compulsion arising from their trafficking situation; see *R v LM & Ors* [2010] EWCA Crim 2327.



CPS Guidance for MSA Cases

Conclusive Grounds decisions are still relevant.

R v Brecani [2021] EWCA Crim 731, para 9

“The CPS will ordinarily wait to know the outcome of a referral to the Competent Authority before deciding to charge or continue proceedings where it is suggested that the offence was committed because of relevant trafficking or coercive behaviour.”

CPS should usually follow the NRM decision, unless there is evidence to the contrary
R v L and Others, AAD

CPS guidance suggests a plea should not be taken until it has been established whether the defendant is a victim of trafficking – *R v D* [2018] EWCA Crim 2995.



Abuse of Process

- The Criminal Court can also consider whether the public interest test has been met.

AAD, AAH, AAI [2022] EWCA Crim 106

“120. But what if the CPS has failed unjustifiably to take into account the CPS Guidance or what if it has no rational basis for departing from a favourable conclusive grounds decision? That of course, given the terms of the current CPS guidance and given the much greater awareness nowadays of the situation concerning VOTs generally, is, or should be, nowadays a highly improbable scenario. But in principle such a scenario would, on ordinary public law grounds, seem to operate to vitiate that prosecution decision: whether by reason of a failure to take a material matter (viz. the CPS prosecution guidance) into account or by making a decision to prosecute which is properly to be styled as irrational. Consequently, such a prosecution may, in an appropriate case, be stayed.”



Letters of representations and Defence Statements

- Letter of representations:
 - All factual information needs to be contained in letter of representations.
 - Including psychiatric/psychological reports or anything that is relevant to the public interest test, and the NRM
 - Refer to relevant policies
 - Give a “reply by” date, chase and then consider a pre-action letter.
 - Defence statements – ask for disclosure relevant to the MSA, and make section 8 applications.

“The police are responsible for requesting relevant material which should be supplied to them by the SCA. The Disclosure Officer will then consider it, redact where necessary and schedule it on the MG6 C, D and E as appropriate. Only in exceptional circumstances will the CPS directly request information or material from the SCA.” CPS Guidance

- If proper disclosure is not made, consider an abuse argument.



Abuse of Process vs JR?

- Will vary from case to case
- Not necessarily mutually exclusive – but cannot run the same arguments in both courts
- An abuse of process may encompass wider considerations, such as whether the defendant can have a fair trial (first limb abuse)
- Judicial Review may take longer, as proceedings should be stayed pending a High Court decision
- Will proceedings in a criminal court re-traumatise your client?



Practical Tips

- Ensure you write a letter of representations that contain all relevant facts, including reports
- Give the CPS reasonable time to reply – then consider a pre-action letter, do not wait for a response if they are taking too long and the trial is approaching
- Be clear with the CPS when you expect a response by
- Try to ascertain whether they are challenging the fact that your client is a victim of trafficking
- Timing – will your client turn 18 ?
- Consider whether they have failed to give weight to relevant reports or policies.



Other Examples of Things to JR

Court decisions:

not to grant an intermediary to a child defendant *R(TI)v Bromley Youth Court [2020] EWHC 1204 (Admin)*

Not to grant a child defendant anonymity: *R(Y) v Aylesbury Crown Court [2012] EWHC 1140 (Admin)*

MOJ decisions

Not to allow defendants access to registered intermediaries *R(OP) v SSJ [2014] EWHC 1944 (Admin)*

NRM decisions

The delay to decisions has been challenged *R (O) v SSHD [2019] EWHC 148 (Admin)*, but the substantive decision is also challengeable.



Children and Trafficking Series

Community Care Challenges

Maria Moodie, Garden Court Chambers

Joe Latimer, Lawstop

29 November 2022



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LAWSTOP



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Case Study 1

- X lived in inner London with mum and little brother
- He had been recognised as having potential learning difficulties, but had no formal diagnoses.
- He was exploited in his teens and forced into selling drugs.
- He was convicted as a 17-year-old. YOT recognised that he should be referred to the NRM and he was recognised as a victim of trafficking. No one bothered to appeal his conviction.
- Three years later, he was still in the same neighbourhood. The next time he was caught, it was much more serious and he was sent on remand.
- An assessment of his fitness to plead and ability to effectively participate in proceedings determined, among other things, that he was autistic.



Why was X failed? (Or what's wrong with the child protection system?)

“Historically, extra-familial forms of harm have been out-of-scope for child protection systems. These systems have been built to intervene when children experience harm that is in some way attributable to the care provided to them by their parents/carers. However, as the profile of issues such as sexual and criminal exploitation has increased – so too have the recommendations for them be viewed as forms of abuse, and therefore child protection issues. This has gradually brought extra-familial harm into the scope of child protection systems, despite these forms of harm being rarely attributable to (i.e. caused by) the parents/carers of the children affected.”

- Carlene Firmin, [Contextual Safeguarding, HM Inspectorate of Probation, Academic Insights](#)



Contextual Safeguarding

Two key areas for safeguarding to focus on:

- where the harm occurs; and
- where protective and harmful relationships form.

Two things to always keep in mind:

- there are important limitations on parenting as a source of protection; and
- there are blurry lines between victimisation and perpetration. That doesn't mean children shouldn't be safeguarded.

<https://www.contextualsafeguarding.org.uk/>



Safeguarding Children in Need

“They were all viewed as offenders first – with safeguarding concerns being attended to later, and largely too late. With neither [the youth justice nor child protection system] addressing the contexts in which harm was occurring, nor attending to the overlap between victimisation and perpetration, these children fell through the cracks”.

Carlene Firmin, Contextual Safeguarding, HM Inspectorate of Probation, Academic Insights
2020/07

- s17(10) Children Act 1989, “Provision of services for children in need, their families and others.”
 - *“...a child shall be taken to be in need if— (a) he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by a local authority under this Part; (b) his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services; or (c) he is disabled,”*



The three stages of community care

Stage	Questions to ask
Assessment	Has it happened? Are needs described accurately?
Plan	Is it reasonable? What's being denied?
Delivery	Is it working? Is it happening quick enough? Is the client free of the places and people that put them at risk?

Contextual Safeguarding!

When to refer?

- Immediate risks require immediate solutions
- The threshold for opening a legal help is low
- Don't forget the young/vulnerable adults too



Case Study 2

- Unaccompanied asylum-seeking child
- Age disputed by the Home Office on arrival – found to be an adult
- Indicators of trafficking / modern slavery but no NRM referral
- Dispersed into adult asylum support accommodation or released from immigration detention without safeguarding measures or referral to LA for fuller age assessment – re-trafficked
- Later comes into contact with a charity who make referral to LA – no steps taken to assess need, age or to safeguard
- Charged with criminal offence arising from trafficking experience or immigration offence – charged and prosecuted as an adult, remanded in adult prison and/or serving sentence in adult prison
- Facing removal as a result of criminal offence and custodial sentence or released with no LA referral or safeguarding measures



Potential challenges – when to refer to community care / public law solicitor

- **Identification:** Request NRM Referral by First Responder / challenge to negative RG or CG decision (challenge to identification decision could involve obtaining an expert trafficking report which could be used in criminal proceedings)
- **Age:** relevant to treatment in criminal justice system, bail or remand into LA accommodation, identification as a child-VoT and access to LA VoT support:
 - Referral to LA to request age assessment / request for re-assessment if previously assessed
 - Request to LA to accommodate and support pursuant to s.20 CA 1989 pending age assessment
 - Request disclosure of Home Office records relating to age assessment and asylum claim
- **Support:** Request to LA for support to child VoT – falls under LA safeguarding duties
- **Safeguarding:** Urgent referral to LA if risk of harm / re-trafficking – safeguarding duties / welfare check
- **Immigration advice:** LA duties to provide access to immigration advice / support as part of Child in Need Plan if looked after under s.17/s.20 CA 1989.
- **Remedies:** Claim retrospective LAC status to access care-leaver support up to 25 years old (*GE (Eritrea)*), action for damages for unlawful detention and/or breach of Art 4 ECHR arising from HO, Police or LA failure to investigate, identify or support on earlier occasion.



Safeguarding Framework

Law and policy relevant to all children

Trafficking specific policies for safeguarding
potential child victims of trafficking



Local authority duties owed to children in need

- Referral of a child to a LA should trigger immediate action -
 - Initial assessment of referral / need (decision on next steps within 1 day).
 - s.17 Children Act 1989 needs assessment (within 45 days)
 - Consideration of whether s.17 / s.20 duties are engaged requiring the provision of accommodation or support.
 - If needs identified, prepare child in need plan to identify services required to meet need.
 - s.47 child protection enquiry if there is a risk to life or of serious immediate harm
 - LA in whose care the child is found must take emergency action
 - Strategy discussion involving police, health bodies and/or NSPCC
 - Apply for Emergency Protection Order
 - All child VoT are looked after by the LA pursuant to safeguarding duties
 - Age assessment
 - First Responder duties to make referral into NRM



Legislation and Policy relevant to safeguarding all children

- **Children Act 2004** –
 - **Section 11(2)** specified public authorities* in England are required to exercise their functions having regard to the need to safeguard and promote the welfare of children (* *children’s services, police, youth offending teams, schools and health authorities*).
 - **Section 10**– relevant public authorities are required to cooperate with each other in discharge of the s.11(2) duty.
- **Section 16E Children Act 2004 (inserted by Children and Social Work Act 2017 Section 16)** requires the three safeguarding partners (LAs, police and CCGs) to make arrangements to work together with relevant agencies to safeguard and protect the welfare of children in the area, including child victims of trafficking
- **Section 55 Borders Citizenship and Immigration Act 2009** – mirrors s.11 duties for the SSHD and applies to both the formulation of policies and individual cases (see, *Nzolameso v Westminster CC* [2015] UKSC 22 [at 24-27])
- **Social Service Well-Being Act 2014 s.5-7 and s.134-** contains similar duties for Welsh public authorities.
- **“Working together to safeguard children” (2018)**– contains the main policy framework for safeguarding children in England and Wales



Trafficking-specific policy relevant to potential child victims

- **“Safeguarding children who may have been trafficked”** (DfE and HO Practice Guidance, Oct 2011) – Non-statutory practice guidance applicable to all public authorities. Sits within the “Working Together” policy framework.
- **“Care of unaccompanied migrant children and child victims of modern slavery: statutory guidance for local authorities”** (DfE, Nov 2017) – statutory guidance issued pursuant to s.7 Local Authority Social Services Act 1970
- **Applicable guidance in Wales:**
 - “Child Trafficking: Operational Handbook” (Sept 2015)
 - “All Wales Child Trafficking Protocol: Safeguarding Children who may have been trafficked”
 - “All Wales Safeguarding and Promoting the Welfare of Children at risk of or abused through Sexual Exploitation (2008).



Identification of Child VoT: Devolving child decision-making pilot programme

Devolving child decision-making pilot programme: general guidance (1 July 2022)

<https://www.gov.uk/government/publications/piloting-devolving-decision-making-for-child-victims-of-modern-slavery/devolving-child-decision-making-pilot-programme-general-guidance-accessible-version>

Purpose - is to test whether determining if a child is a victim of modern slavery within existing safeguarding structures is a more appropriate model for making modern slavery decisions for children.

Scope - For children more than 100 days away from their 18th birthday (if less than 100 days – SCA)

Process: RG and CG decisions will be taken through a multi-agency structure at one or more meetings, with representation from the three safeguarding partners – the local authority, health and police.

Pilot areas: Hull City Council, LB of Barking and Dagenham, LB of Islington and LB of Camden, North Lincolnshire and North East Lincolnshire, North Yorkshire CC and the City of York, RB of Kensington and Chelsea and Borough of Westminster, Solihull Council, Glasgow City Council, Cardiff Council, Newport City Council and Torfaen, Blaenau Gwent, Monmouth and Caerphilly.



Examples of successful public challenges

- with community care/criminal justice cross over, or
- relevant to support for child VoT and age disputed children



R (TDT) v Secretary of State for the Home Department [2018] EWCA Civ 1395

- Vietnamese putative child VoT released from immigration detention without any safeguarding measures – disappeared, presumed re-trafficked.
- Court of Appeal looked at the “operational / protection duty” arising under Art 4 ECHR
- Protection duty is triggered prior to a positive RG decision – at the stage when a state authority were aware, or ought to have been aware, of circumstances giving rise to *a credible suspicion* that an identified individual had been, or was at real and immediate risk of being, trafficked [at 35]
- The material before the Secretary of State justified a “credible suspicion” at the point of release from immigration detention that the appellant was a VoT and at real and imminent risk of re-trafficking on release if protective measures were not taken [77 and 80].
- *Secure accommodation ought to have been provided to protect against the risk of re-trafficking*
- Importantly - solicitors were able to continue to act for TDT after his disappearance as they had taken sufficiently detailed instructions. If TDT were to re-appear he would have a potential damages claim against SSHD.
- *The principle and findings in case would apply equally to potential VoT being released from prison if there is a credible suspicion of trafficking and the need for secure accommodation.*



R. (on the application of AR (A Child)) v Waltham Forest LBC [2021] EWCA Civ 1185

Systemic challenge to the LA's arrangements for providing secure accommodation to children who would otherwise be detained overnight in a police cell

- Pursuant to s.21(2)(b) CA 1989 a LA has a discretion (not an absolute duty) to provide *secure* accommodation. **There is requirement that a LA has a reasonable system in place to respond to police requests for secure accommodation under s.38(6) PACE**
- Divisional Court dismissed the claim on the basis that it involved a complaint about the nationwide lack of secure accommodation due to the absence of funding by central government.
- Appeal allowed: **Breach of s.21(2)(b) CA 1989**
 - The statutory duty to provide a reasonable system is imposed on each individual local authority not central government.
 - LA can discharge this duty in a number of ways, not limited to providing secure accommodation itself.
 - The system which WF had in place was not reasonably capable of providing secure accommodation in response to a request under section 38(6) of PACE.
 - **There was no reasonable prospect of secure accommodation being available at short notice during the week - it was common practice that PACE requests were refused across all London LAs.**



R. (on the application of H) v Swindon BC [2021] EWCA Civ 1836

Appeal by a VoT against a decision that the LA had not breached of Art 4 ECHR despite finding that it had breached s.47 CA 1989 duty to investigate whether action was needed to protect his welfare

UASC looked after and accommodated in foster care by LA pursuant to s.20 CA 1989.

Incidents of concerning behaviour and indicators of trafficking – but LA failed to undertake s.47 assessment or make enquiries with police or SCA about risks faced by H on the basis of (i) age assessment and (ii) lack of evidence of trafficking.

High Court:

- The reasons for not initiating a s.47 assessment did not amount to a good reason for departing from guidance
- No breach of operational or procedural duties imposed by Article 4 ECHR

Court of Appeal:

- Accepted that Article 4 ECHR was engaged. Failure to make enquiries *may* amount to Art 4 breach.
- Not necessary to show that loss has flowed as a result of Art 4 breach (*R (TDT)*), but in this case, although LA had failed to make enquiries, H had, in fact, been accommodated, supported and protected - no Art 4 breach



Re W and Re Z (EU Settled Status for Looked After Children) [2021] EWHC 783 (Fam)

Guidance as to how local authorities should approach applications to the EU Settlement Scheme (“EUSS”) for children in their care

A LA is generally entitled to make immigration-related applications on behalf of a child subject to a care order or placement order pursuant to the parental responsibility conferred on it by s.33 (3) CA 1989 and s.24 Adoption and Children Act 2002, without the court’s authorisation and in the face of parental objection or absence of consent.

Additional Guidance given:

- The immigration status of LAC should be addressed as part of the care plan.
- Local authorities were required to identify children eligible to apply under the EUSS and make applications in a timely manner .
- The duty extended to children looked after by reason of being accommodated by the local authority under s.20, care leavers, children in receipt of s.17 local authority support, and children who were lost or abandoned.
- The child's wishes and feelings should be considered.
- While the parents' views should be obtained and considered, they were not determinative unless they had a real bearing on the child's welfare.



Age Assessment cases

R. (BF (Eritrea)) v Secretary of State for the Home Department [2021] UKSC 38

- **Home Office Assessing Age Policy found to be lawful.** In the immigration context, a policy that immigrants claiming to be children should be assessed as an adult only if their physical appearance and demeanour "very strongly" suggested that they were "significantly" over 18 (*rather than over 25*) was lawful and did not direct immigration officers to act in conflict with their legal duty under the statutory regime.

R (MH & HT) v Coventry CC & SSHD [2022] EWHC 98 (Admin)

- Challenge to Kent Intake Unit "short age assessments" and Social Work Guidance (v.2)
- Guidance and practice of detaining YP pending age assessment held to be unlawful
- **If YP was subject to age assessment under this policy – susceptible to challenge.**

R. (AB) v Brent LBC [2021] EWHC 2843 (Admin) Also known as: *R. (NLK) v Brent LBC* , *R. (AD) v Brent LBC*

- Challenge by 3 putative UASC to **LA's refusal to accommodate under s20 CA 1989 pending AA**
- **Held:** LA had acted unlawfully in refused to accommodate under s.20 pending completion of an age assessment, after the Home Office had placed them in adult accommodation under the IAA 1999 s.98. There had been no justification for the local authority's departure from non-statutory guidance that children and young people were to be looked after under s.20 while the age assessment process continued and that most assessments should be completed within 28 days.



Adultification



How not to think about vulnerable defendants

‘The concept of adultification is when notions of innocence and vulnerability are not afforded to certain children. This is determined by people and institutions who hold power over them. When adultification occurs outside of the home it is always founded within discrimination and bias..’

Adultification bias within child protection and safeguarding’ [Jahnine Davis, HM Inspectorate of Probation, Academic Insights 2022/06](#)

“The circumstances of their lives and deaths suggest that perceptions of vulnerability apply to some children more than others, implying that agencies do not view age as an obvious indicator of vulnerability, especially if the young person is Black and male (Goff et al, 2014), and the harm is outside of the home. Opportunities to effectively support Chris and Child C may have been overlooked due to a unquestioning culture that appears to have lost sight of the innate vulnerability of all children.”

‘Boys to men: the cost of ‘adultification’ in safeguarding responses to Black boys’, [Jahnine Davis and Nicholas Marsh, Critical and Radical Social Work 2020](#)



Thank you

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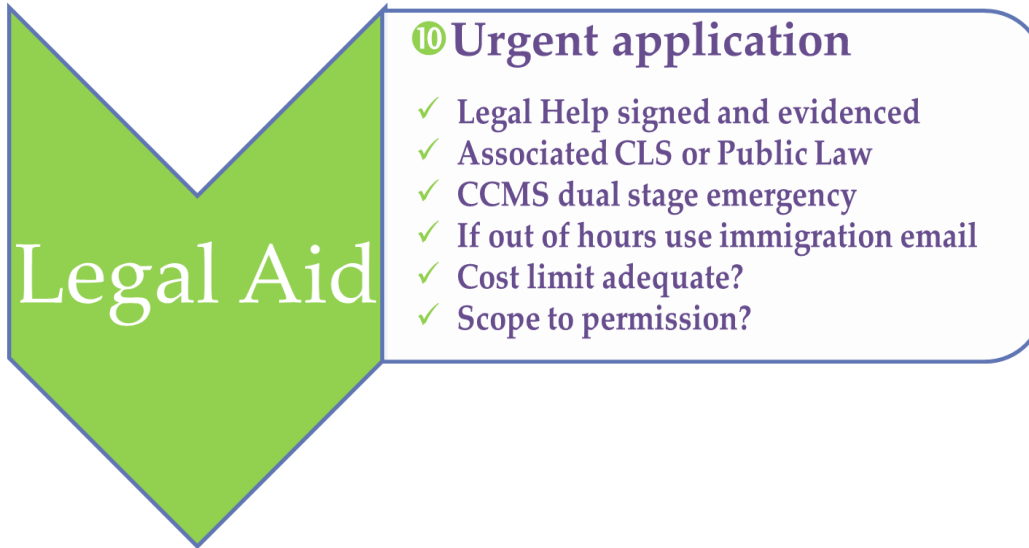


GT Stewart
every client matters

Judicial Review of Prosecution Decisions

Greg Stewart

Funding



Email service for JR custody time limit cases

The Legal Aid Agency has issued the following guidance:

A new email service is available solely for crime providers using civil forms in emergency judicial review applications associated with custody time limit extensions:

LAAssociatedcivilapplications@justice.gov.uk

If you have a Client and Cost Management System (CCMS) account, you will be able to make this application more efficiently by using our online system.

Why are you doing this now?

We want to ensure providers working under the 2017 Standard Crime Contract understand how to use to civil forms to apply for funding in custody time limit cases. This is civil work arising out of criminal proceedings.

Associated civil work is provided for within the crime contract. But we realise that making civil legal aid applications is very different to the process for crime. So, we want to make sure you can contact us with any questions.

Emergency application emails

Remember that this option of sending application forms to the new mailbox is for emergency applications only:

LAAssociatedcivilapplications@justice.gov.uk

Who processes emergency applications?

Your application will be processed by the Exceptional and Complex Cases Team (ECCT). We aim to make decisions within 48 hours of receiving emails.

What if 48 hours is too long?

If you need a decision more quickly you will need to:

- call customer services on 0300 200 2020
- explain why a decision is needed faster than 48 hours
- ask for the case to be fast-tracked to ECCT managers

How to speed up your application

You should include the following to help speed up a decision on your emergency application:

1. Relevant questions on the CIV APP1 need to be answered. This includes providing a full case statement. You need to clearly set out the reasons for any conclusions that are drawn about the funding criteria.
2. Applicable means forms should also be used and sent with the CIV APP1 form. These are listed below at the end of the article.
3. Complete decision/order of the court.
4. Any pre-action correspondence.
5. Any advice or note from counsel about the merits of any proposed judicial review, where available.

The Test

- ✓ Illegality;
- ✓ Irrationality;
- ✓ Procedural fairness;
- ✓ Proportionality;
- ✓ HRA 1998.



What that means in practice

- ✓ **Illegality** - not understanding the limits of their powers or using them wrongly by not taking a material factor into account or failing to (basis for decision)
- ✓ **Irrationality** – the decision maker may have applied *right* factors or law but their determination was Wednesbury unreasonable (conclusion beyond margin of reasonableness)



Prosecution Errors

- ✓ **Procedural impropriety** – lack of defence input
- ✓ **Natural justice** - and Convention challenges
- ✓ **Legitimate expectation cases** – promise not to prosecute
- ✓ **Fettering discretion** – charging decisions where blanket policy i.e. knives



Practical Issues

- **Promptly** and within 3 months

- **Pre-action**

 - ✓ LBC – do you need one? If public body yes even if just a notification of claim. See Pre-Action Protocol.

- **The Response** - 14 days to respond



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every client matters

Issue Stage

Statement of facts and grounds

Facts - Solicitor

Grounds - advocate (unless urgent)

Witness Statement in support if applicable

Urgent - N463 and draft order

AOS – 21 days to lodge and 7 more to serve



Permission Stage

Refused - appeal within 7 days

If renewed app refused – appeal to COA

Oral “*rolled up*” hearing directed

Granted – agree directions

Pre trial – sort out funding and comply directions

Evidence and final bundle



Inter Partes costs if successful

- ✓ The costs provisions must always be in the body of the order and not in the schedule if it's a Tomlin Order (Consent)
- ✓ Add timescale in the order '*Defendant pay Claimant's costs within 14 days of agreement or assessment*' will make it easier to enforce should payment not be made
- ✓ If there has been ADR (mediation) you should be careful to ensure that costs provision is sufficiently broad to cover those costs (by specific reference)





GT Stewart
every client matters

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Thank you

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GARDEN COURT CHAMBERS
