

《Summary》

Protection of Legitimate Expectations… Some developments after Coughlan

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The decision of the Court of Appeal in *R. v. North and East Devon Health Authority*,

Ex p. Coughlan ([2000] 2WLR 622.) is very significant in that it considered the test for review which should be applied when a public body seeks to resile from an undertaking it has given on the grounds that this is justified by the public interest (P.Craig and Soren Schønberg, “Sustantive Legitimate Expectations after Coughlan, [2000] P. L. Winter 684.).

The court of appeal in *Coughlan* showed three possible situations.

The first is the case where the court is to review the decision on traditional *Wednesbury* grounds.

The second is where the court decided that there was a legitimate expectation to be consulted before a decision was made.

The third case is one that a lawful promise or practice has induced a legitimate expectation of a benefit which is substantive and that the court will in a proper case decide whether to frustrate the expectation is so unfair that to take a new and different course will amount to an abuse of power. The court further made clear that once the legitimacy of the expectation is established, the court will have the task of weighing the requirements of fairness against any overriding interest relied

upon for the change of policy.

Further to this task for the court of weighing the requirements of the fairness for the individual against any overriding interest of the public, Craig currently argued that there will be circumstances in which the benefit to the public as a whole, as beneficiaries of the ultra vires principle, does not outweigh the hardship caused to the individual as the recipient of the ultra vires representation.

Craig thus prefers the modification of the ultra vires principle by insisting that if the the harm to the public would be minimal compared to that of the individual ,there would seem to be good reason to consider allowing the representation to bind.

Against this understanding of the principle of ultra vires, there is a severe criticism from the standpoint of the constitutional system of legislative supremacy “where Parliament has provided statutory limits for a public body, the courts can and should compel the public body both to undertake its statutory duties, and to refrain from exceeding the statutory limits on its powers (Sarah Hannett and Lisa Bush, “Ultra vires representation and illegitimate expectations,” [2005] P.L. Winter, 732.).

On the other hand, May L. J. in the case of *Rowland v. Environment Agency* [2003] EWCA Civ1885 preferred the view of Craig that legal incapacity should not automatically be considered an insuperable obstacle and that any potentially damaging effects of enforcing unauthorized representations should instead be balanced against the harm likely to be occasioned to the individual by frustrating the expectation.

In this article, I will briefly examine the role of the substantive legitimate expectations in relation to the ultra vires principle by analyzing relevant cases both of England and of the European Court of Human Rights.