

Judicial review practice problem question

Following public concern about poor work carried out by locksmiths and the difficulty in finding locksmiths at weekends, Parliament enacted the Locksmiths Act 2015 (fictitious), establishing the Locksmiths Regulation Authority ('the LRA') and giving it the power to grant certificates of competence. While it will still be legal to practise as a locksmith without a certificate of competence, the LRA will encourage the public to use locksmiths who hold certificates. The LRA has issued guidelines stating that certificates will normally be awarded to locksmiths if they: have practised as locksmiths in the UK or another EU country for at least five years or have a qualification issued by an approved institution located within the EU; have adequate insurance; are willing to provide locksmith services on 15 weekends in each year. (i) Eki's application for a certificate was recently refused on the grounds that she had only practised as a locksmith in the UK for three years, and she did not have a qualification issued by an approved institution located within the EU. Before coming to the UK, she had practised as a locksmith in Nigeria for 18 years and can produce a certificate of competence issued by the Nigerian authorities. (ii) Graham was granted a certificate four months ago, even though he has never practised as a locksmith and has no relevant qualifications. The UK Locksmiths Forum ('the Forum'), is a not-for-profit organisation of locksmiths set up to promote the level of skills and ethics within the industry. The Forum discovered last week, when the LRA published its annual report, that Graham's father is a senior employee of the LRA. (iii) Rebecca's application for a certificate was recently refused although she fulfilled all the conditions set out in the LRA's guidelines. The LRA has refused to give any reasons for its decision. Advise Eki, the Forum and Rebecca whether each may make a claim for judicial review.

Amenability/ Eligibility The Locksmiths Regulation Authority ('the LRA') is a public law body as it was established by the Locksmiths Act 2015 and is exercising its powers pursuant to that Act. Awarding certificates of competence pursuant to statute is a public rather than private law matter, so the LRA is amenable to judicial review (*O'Reilly v Mackman* (1983)). A claimant must have 'sufficient interest' in a decision to lodge a judicial review claim (s.31(3) Senior Courts Act 1981 ('SCA')). Eki and Rebecca are directly affected by the decisions, as their applications have been rejected; they will Page 12 of 18 therefore have standing. The standing of the Forum, as a pressure group, requires further analysis. Cases such as *R v Foreign Secretary, ex p. World Development Movement Ltd* (1995) summarise the factors the courts consider - • The need to uphold the rule of law • Whether any other body was likely to bring a challenge • The role of the pressure group involved. The Forum, as an organisation set up with the remit of promoting the level of skills and ethics within the industry, is not a 'busy-body' and the court would be unlikely to reject a valid claim simply on the grounds of standing. Also, as its claim concerns potential bias, the rule of law comes into play. **Timing** All the claims must be brought promptly and in any event within three months (s.31 SCA 1981 and CPR r 54.5). Nonetheless, although the Forum's claim is late, the court will probably grant it an extension as it has a good reason for the delay (*R v Stratford-upon Avon DC, ex p. Jackson*). **Grounds** Lord Diplock identified the traditional grounds of review as illegality, irrationality and procedural impropriety (*CCSU v Minister for the Civil Service* (1985)); these will be applied as relevant: (i) Eki **Illegality** Fettering of discretion The LRA when exercising its statutory discretion may adopt a policy concerning how it will exercise its discretion, but the policy must be reasonable and permit exceptions. The policy seems reasonable as it provides an appropriate means of ensuring that the LRA grants certification to suitable applicants who are willing to work at weekends. However, while the LRA may adopt a policy, it should be prepared to listen to anyone with something new to say (*British Oxygen v Minister of Technology* (1970)). Eki has provided ample evidence of experience, and the fact that it was obtained outside the UK/EU should not preclude the LRA from considering it.

Also, in disregarding her evidence of experience, the LRA may have ignored a relevant consideration in coming to its decision (*Roberts v Hopwood* (1925)).

Page 13 of 18 (ii) The Forum Procedural impropriety Rule against bias A decision can be challenged if the decision-maker is biased. In this case, a senior employee of the LRA is the father of the successful applicant for a certificate. The father's interest probably falls short of a direct interest which would automatically disqualify him, as there is no evidence that he has a financial stake in Graham's business (*Dimes v Grand Junction Canal* (1852)). Accordingly, the Forum would need to argue that it was still sufficient to lead a fair-minded and impartial observer to conclude that there was a 'real possibility' that the decision-maker had been biased (*Porter v Magill* (2002)). On the facts this may well be the case. Irrationality Having regard to relevant considerations only, the decision may be so unreasonable that no reasonable body could have reached it (*Associated Provincial Picture Houses v Wednesbury Corporation* (1948)). Although the threshold is high, it could arguably be reached, as Graham is a highly unsuitable applicant. The decision also seems to be outrageous in its defiance of logic (CCSU).

(iii) Rebecca Legitimate expectation The concept of legitimate expectation is commonly regarded as an extension of natural justice or procedural fairness; if a public body has stated that it will act in a given way, then in principle it should abide by its implied promise. Rebecca should argue that the LRA should be held to its guidelines for granting certificates of competence. Lord Woolf clarified the concept in *R v North and East Devon Health Authority, ex p. Coughlan* (2001). The court may decide: (1) that the public authority need only bear in mind its previous policy or other representation and the court's function is simply to review whether the decision is rational; (2) that the promise or practice creates a legitimate expectation of, for example, being consulted before an adverse decision is taken. (3) that, as the promise or practice has created a legitimate expectation of a benefit that is substantive, the court will decide whether it is an abuse of power to frustrate that expectation. In deciding this, the court will balance the requirements of fairness against any overriding interest submitted for the change of policy. Legitimate expectations can either be 'substantive' or 'procedural' (per Laws LJ in *R (Niazi) v Secretary of State for the Home Department* (2008)). A substantive legitimate expectation (Lord Woolf's third category) is only likely to arise where Page 14 of 18 the public body concerned had made a specific undertaking, directed at a particular individual or a small group of people, that the relevant policy would be continued. Here the LRA has issued general guidelines and it is doubtful that its conduct will fall into the third category. However, the court will scrutinise the rationality of its decision. The LRA has also refused to give Rebecca reasons for its decision. While there is no general duty on decision-makers to give reasons (*Cannock Chase DC v Kelly* (1978)), if, in the absence of reasons, a decision appears to be irrational, a lack of reasons may provide grounds for challenge. In *R v Civil Service Board, ex p. Cunningham* (1991), the court stated that natural justice requires that a decision-maker should give reasons for a seemingly aberrant decision to ensure that a claimant had an effective right to challenge that decision. As Rebecca meets the LRA's guidelines for a certificate, it appears that the decision may be wrong and so she is entitled to reasons. In the absence of reasons, the court may infer that the decision is irrational. Remedy Each claimant should seek a quashing order.