



## Recent cases that offer guidance on judicial review in the criminal sector

*A number of recent cases have offered substantial guidance on when judicial review should be used, and how such cases should be approached, in the criminal sector.*

### **R (on the application of Highbury Poultry Farm Produce Ltd) (Claimant) v Telford Magistrates' Court (Defendant) & Crown Prosecution Service (Interested Party) [2018] EWHC 3122 (Admin)**

***There is no power to state a case in relation to an interlocutory ruling. Instead, a magistrate should determine the case finally and then state a case if it is appropriate. If it is not appropriate to determine the case finally, the court of first instance should make an application for judicial review instead of an appeal by way of case stated.***

#### Facts:

The applicant slaughterhouse had been charged with offences under the Welfare of Animals at the Time of Killing (England) Regulations 2015, reg. 30(1)(g). The Magistrates' court was tasked with determining if these were offences of strict liability. The District Judge found that such offences did not require proof of *mens rea*, but decided to state a case questioning if offences under reg.30(1)(g) required proof of (a) *mens rea* and (b) the presence of a culpable act/or omission on the part of the business operator. The applicant in this case also brought an application for judicial review as there were concerns as to whether a Magistrates' Court, that had yet to determine guilt, could use the case stated procedure.

#### Judgment:

Hickinbottom LJ and Jay J found that there was no power to state a case with respect to an interlocutory ruling. The Magistrates' Court should determine the case finally and then, if necessary, state a case. If the ruling in question did not determine the proceedings finally, then the case stated procedure is not appropriate. In such a case, the court should proceed by way of an application for judicial review, rather than an appeal by way of case stated.

### **R (on the application of AL) (Claimant) v Serious Fraud Office (Defendant) & (1) XYZ LTD (2) ABC LLP (3) MS (4) DJ (Interested Parties) [2018] EWHC 856 (Admin)**

***The appropriate forum for litigating disclosure disputes is not the High Court by way of judicial review, as there are adequate remedies in the Crown Court in most cases. However, if the Crown Court is unable to determine the matter fairly, it is then acceptable to proceed to the High Court by way of judicial review.***

#### Facts:

The Serious Fraud Office entered into a deferred prosecution agreement with the first interested party ("the company"). The terms of this deferred prosecution agreement required the company to disclose all information in its possession, custody and control which concerned all matters relating to the conduct described in the draft indictment and the statement of facts. The Serious Fraud Office did not take steps to obtain notes that had been comprised by the company, when senior executives were interviewed when deciding whether to self-report wrong doing. In response to this, the applicant applied to the Crown Court for disclosure, which was refused. Judicial review proceedings were then brought in which the court considered the Serious Fraud Office's decision not to pursue the company for breach of the deferred prosecution agreement.

#### Judgment:

Holroyde LJ and Green J held that the Crown Court should be the first port of call when determining disputes in relation to disclosure. That was clearly Parliament's intention in drafting legislation. It is not appropriate to ask the High Court to answer such questions by way of judicial review first. However, it was made clear that judicial review does still have a role in the determination of disclosure disputes. If the Crown Court cannot answer these questions fairly, it then becomes appropriate to proceed to the High Court by way of judicial review.

## **R (on the application of AF) v Kingston Crown Court [2017] EWHC 2706 (Admin)**

***A Crown Court decision as to bail, following conviction and before sentencing, is a matter “relating to trial on indictment”. As such, the Senior Courts Act 1981 s.29(3) excludes the High Court from considering an application for permission to apply for judicial review of that bail decision.***

Facts:

The Applicant was on conditional bail both prior to, and during, her trial for arson in the Crown Court. Upon her conviction, the applicant was remanded in custody pending her sentencing hearing. This decision was challenged by way of judicial review. The issue was whether the High Court had jurisdiction to consider the application.

Judgment:

Holroyde LJ and Ouseley J held that a bail decision following a verdict, but prior to sentencing, was an integral part of the trial process. As such, it was a matter “relating to trial on indictment”. Section 29(3) of the Senior Courts Act is clear; in such situations, the High Court does not have jurisdiction to hear an application for permission to apply for judicial review.

## **R (on the application of Hassani) v West London Magistrates’ Court [2017] EWHC 1270 (Admin)**

***When dealing with cases of judicial review, the key objective is to deal with the case fairly. This includes a duty to act efficiently and expeditiously. It is not appropriate to waste time, extend hearings or take hopeless points in the hope of wearing down an opponent***

Facts:

The applicant was convicted of driving his Porsche over the drink drive limit. This followed a summary trial in which an excessive number of technical points on behalf of the applicant. Rather than challenging the merits of the Crown’s case (which the applicant had no evidence to rebut) by way of an appeal to the Crown Court, the claimant sought to challenge his conviction by way of judicial review. This application was refused by a single judge. The applicant then attempted to renew this application out of time.

Judgment:

Irwin LJ and Garnham J allowed the applicant to withdraw the renewed application for permission for judicial review, but went on to offer stern criticism of conducting appeals in this matter. Irwin LJ made it clear that counsel should only draft grounds for appeal that have foundation. Courts must consider the Criminal Procedural Rules and adopt firm case management in order to preclude “game-playing”. It was made clear that “the criminal law is not a game to be played in the hope of a lucky outcome, a game to be played for as long and in such a fashion as the paying client is able or prepared to afford”.

Harry Marriott

Law is correct as at 24<sup>th</sup> November 2018

*Whilst every effort has been taken to ensure these notes are as correct, they are intended to give a general overview of the law. Readers are respectfully reminded that they are not intended to be a substitute for specific legal advice. No liability is accepted for an error or omission contained herein.*

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