Chapter 10: Judicial review: access to review and remedies

Problem scenario

The (fictitious) Local Education Act 2025 empowers local authorities to decide which pupils are admitted to their local state schools and what the rules are relating to progression through and graduation from those schools. The basis for the reform rests on a policy that was introduced to encourage greater local influence on education. Its aim was to enable local authorities to know local children better and to be in a better position to decide on the appropriate educational system.

One particular local authority, however, sees the power as a means through which they can guarantee the quality of pupils admitted to and progressing through local state schools in order to improve the educational reputation of their area. It decides to introduce policies across all of its five state primary schools to require pupils to pass exams before entry at the age of five and again at the end of each year in order to progress. Those pupils who fail to achieve entry to or progression at the schools are encouraged to seek education in the next town. The introduction of this policy attracts widespread criticism and outrage, with many individuals and groups considering legal action against the local authority.

Advise each of the following groups on whether or not they satisfy the legal requirements for a judicial review application:

- Primary School Teachers Together—the well-established union of primary school teachers of which the majority (80 per cent) of the local state school staff are members.
- The editor of the local newspaper who has been inundated with letters of complaint.
- Parents for Education—a group of local parents, whose children attend state schools in the area and who have joined forces with the aim of campaigning against this policy.
- The priest at one of the local churches (associated with one of the schools) who, whilst on sabbatical at the time the policy is published, learns of it upon his return six months later.
- The two head teachers of the two private primary schools in the area who are concerned that the new policy will take the best pupils away from them.

One of the most prominent issues presented by this problem scenario relates to the issue of standing. This answer, therefore, seeks to go through each of the stated parties in turn, considering whether or not they can be said to have standing in respect of the council's policy.

(1) Primary School Teachers Together

With regard to Primary School Teachers Together, we can look to the case of R v Secretary of State for the Home Department, ex p Greenpeace (No 2).[1] The parallel with this particular authority is founded on the fact that, just as Greenpeace was held to have standing due to its long-standing and well-established reputation and the fact that so many local residents were members, the proposed application in the scenario is also brought by a well-established body, which represents a significant majority of teachers affected by the council's policy. What is more, the teachers will be affected by the implementation of this policy, therefore satisfying, more easily, the test for standing applied by the courts.

(2) Newspaper editor

With regards to the newspaper editor, we are guided by the case of *R v Secretary of State for Foreign Affairs, ex p Rees-Mogg*,[2] in which the editor of *The Times* was held to have sufficient standing to challenge the government's ratification of the Protocol on Social Policy by virtue of his interest in constitutional matters. Such a liberal approach to standing would suggest that, in the problem scenario, the editor of the local newspaper might similarly be granted standing on the basis of an arguable interest in the local area, fuelled by the numerous letters of complaint that have been received. In addition, and borrowing Watkins LJ's words from *ex parte Leigh*, it could also be argued that the newspaper editor is acting as the 'guardian of the public interest',[3] thereby strengthening the meritorious nature of the case.

(3) Parents for Education

Relevant to the circumstances surrounding any possible application for review brought by Parents for Education is the decision in the *R v Secretary of State for the Home Department, ex p Rose*

[1] [1994] 2 CMLR 548.
[2] [1994] QB 552.
[3] [1987] QB 582, 598.

Theatre Trust[4] case. This parallel is drawn on the basis that, like the campaigners challenging the decision of the Secretary of State not to list the Rose Theatre site on the schedule of monuments, the group of local parents came together for the specific purpose of challenging the council's policy. Unlike the campaigners in Rose Theatre, however, there is perhaps a stronger case to be made in favour of standing. It has already been noted that the campaigners in that case were assessed individually, with none of them having sufficient interest to bring an application, a reality that was unchanged by the combined forces of the Trust bringing the case. Parents for Education, however, is made up of local parents, whose children attend local state schools and who, therefore, could be held to have an interest in challenging the policy due to their children being directly affected by its implementation. Despite the decision in Rose Theatre, therefore, standing could potentially be granted to this group.

(4) Priest

On the question of standing, the priest cannot be said to be directly affected by the council's policy, at least to the same degree as the pupils, parents, and teachers. This said, given the courts' liberal approach to standing, it is perhaps not inconceivable that they might theoretically find a sufficient interest on the basis of the priest's association with one of the schools, through his church. Regardless of this, however, the court would be unlikely to grant leave for the priest's application on the basis that he has exceeded the strict, three-month time limit in which judicial review proceedings must be brought. Due to his absence, on sabbatical, for six months, he has been unable to make a start at an earlier point. Despite the court's ability to exercise a degree of discretion on this point, they would be unlikely to permit the priest's application to proceed for these reasons.

(5) Private school head teachers

Despite the reasons underpinning their proposed application for judicial review, the private school teachers would be unlikely to be granted standing. In the IRC case, the National Federation of Self-Employed and Small Businesses Ltd was not granted standing on the basis that they were just a body of taxpayers and had no legitimate interest in the way in which the Inland Revenue dealt with the casual Fleet Street workers. In a similar vein, here, it could be argued that the private school head teachers have no legitimate interest in the way in which the local council deals with state schools under its charge. Private schools are private entities, falling outside the authority of the

[4] [1990] 1 QB 504.

council and they would therefore struggle to show themselves to be directly affected by the policy in question.

Finally, and leaving aside the question of whether any application for judicial review would succeed on these facts—a consideration that can only be entertained once the various grounds for review (discussed in Chapters 11 to 13) have been explored—there are two remedies potentially of interest to the scenario in the problem scenario. First, are quashing orders. Each of the parties seeking to bring an application for judicial review does so to challenge and change the policy as it stands. They would want, therefore, for a case to be made in favour of striking out—or quashing—the council's policy. Secondly, though of perhaps less importance, a court might grant a mandatory order, requiring the council to review the statutory power granted under the 2025 Act and to set out another policy.