

Locus standi

NOTE VERY CLOSE LINKS BETWEEN THIS TOPIC AND AJR

1. The pre 1977-1981 problem

Presumed difference in standing between 'private' and 'public' remedies

1.1 The policy issues

Standing is a rationing device ISSUE IS WHETHER CLAIMANT HAS ACCESS TO COURT AT ALL AND SO VERY SIGNIFICANT TO RULE OF LAW

Easy to satisfy standing test

Benefits

Maximise access to court;
So reduce likelihood that unlawful actions go unchallenged; Maximise protection of individual rights;
So enhance Diceyan RoL

Drawbacks

Government bodies must spend £ and time defending legal action;
Government paralysed; requires large amount of court time and £

Hard to satisfy standing test

Benefits

Converse of above

Drawbacks

Converse of above

Standing an excellent vehicle to illustrate **Harlow and Rawlings (1984 *Law and administration*)** 'red light vs green light' analysis of administrative law

1.2 The private law remedies - orthodoxy

Declaration/injunction

restrictive test – private legal rights or atypically intense effect on public law right

Boyce v Paddington BC (1903)

Church – billboard – right to light

Gregory v Camden LBC (1966)

Planning permission – convent - school

Craig (2003) *Administrative law* – public law for vindication of private rights

1.3 The public law remedies – orthodoxy

Certiorari/ prohibition

loose test – person aggrieved – stranger – but not busybody

Ex parte Greenbaum (1957)

Market pitch

Peachey Property (1966)

Ratings list; 'not to be measured in £,s., and d.'

GLC, ex parte Blackburn (1976)

Film licensing; (is Blackburn a 'busybody?')

Important: Note interlinkage with pre-1977 public-private divide; ie easier to get standing for public law remedies, but those remedies less useful if need long time limits, discovery, cross-exam and damages

1.3 Standing as a preliminary or threshold issue

Presumption is that standing is a matter prior to and separate from the merits of the case; ie court's only concern is with intimacy (financial? property? liberty?) of Applicant's connection to the decision being challenged

1.4 Was the orthodoxy overstated ?

Broad test for declaration and injunction

Blackburn v A-G (1971)

EC accession (very important issue)

McWhirter v IBA (1973)

'matter of high constitutional principle'; (rule of law?)

Standing mixed up with the merits

R v MPC, ex parte Blackburn (1968)

'deplorable state of affairs'; non-enforcement of gambling laws

2. Order 53/Supreme Court Act 1981 s.31(3)

'sufficient interest in the matter to which the application relates' : NOTE APPLIES TO THE 5 REMEDIES (+ DAMAGES) AVAILABLE UNDER AJR

Issues

Does each remedy have different test ? Is old case law relevant ?

Will courts favour broad or narrow interpretation ? What factors go to 'the matter' ?

3. The IRC case – Fleet St printers tax amnesty

In HoL :

Fusion of standing and merits; strong case + important issue could give standing even if limited intimacy; cf Diplock 'grave lacuna in our system of public law'

Wade (1988) Administrative law

'liberal but uncertain character'

This quote a likely analytical peg on which to hang a question; cf 'To what extent has Wade's prediction proved accurate?'

4. Post-IRC

clear fusion of standing with merits

4.1 More expansive test

Whitehouse (1984)

scum film/ as licence payer not citizen or pressure group

CPAG (1989)

represents welfare claimant/ expert/ wd claimant challenge

Smedley (1985)

EC issue; £300m; is he busybody

Felixstowe Justices (1987)

yes declaration as citizen; no mandamus as journalist

Greenpeace (1994)

expert; represents many; respectable

Cane (1995) in Loveland
A Special Relationship ?

Associational; representative; surrogate

More expansive version RoL

Link with **GCHQ** + **O'Reilly** + **Cocks** + **Winder**.

4.2 An aberration ?

Rose Theatre Trust (1990)

Schiemann (1990) *Public Law*

standing rules to avoid chaos

Conclusion

Pergau Dam (1995)

standing point not even argued

Ex parte Dixon (1997)

admin law about public wrongs, not private rights

Trend towards more expansive red light understanding of rule of law ?

Links

GCHQ ? **Boddington** ?

Mustill in **FBU**?; **AJR**