

Judicial Review:

A Practical Guide

Hugh Southey
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JORDANS

JUDICIAL REVIEW

A PRACTICAL GUIDE

Hugh Southey

Mr Justice Fulford



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FOREWORD

In 1999 the authors of this work published an earlier title on the work of the Administrative Court in relation to criminal cases. The law which is applied to these cases is in many respects common to judicial review generally. But in a good many other respects, both procedural and substantive, it is peculiar to the criminal process. This new book is accordingly a handbook for use in civil as well as criminal cases.

Since 1999, when the original work was published, one of its authors has become Mr Justice Fulford, a judge both of the Queen's Bench Division of the High Court and of the International Criminal Court. This new work draws on his and Hugh Southey's learning and experience, in both civil and criminal cases. No book can anticipate and answer every problem, but this one valuably surveys current authority and principle and provides precedents for many of the documents that practitioners will need.

The Human Rights Act 1998 is not discretely treated but is absorbed into the main text. This is as it should be. The jurisprudence of the European Convention on Human Rights is gradually entering our own law, causing us to re-examine some accepted ideas and to accept some new ones. The voyage of discovery which I anticipated in my foreword in 1999 is not proving as stormy as some had predicted, but it is full of interest. This book will help to pilot practitioners on a sometimes tricky but always rewarding journey.

Stephen Sedley
The Rt Hon Lord Justice Sedley
Royal Courts of Justice

PREFACE

For any lawyer interested in our system of government there can be few more interesting areas of law than judicial review. That is because judicial review plays a critical role in our system of government.

It is a basic principle of our constitution that the executive is subject to judicial control. It ensures that the executive complies with the law made by the democratically elected legislature. If there were to be no judicial control, the executive could ignore the legislature. Judicial review is the form of procedure that is normally used to bring decisions of the executive before the courts.

In the last few years we have seen how powerful this form of judicial control can be. In particular, we have seen how it can restrict the executive in a manner that can cause the executive to resent the interference with its freedom to act. For example, much of the tension between David Blunkett and the judiciary is the result of decisions in the area of judicial review.

The restrictions on the executive are critical at a time like the present. The executive has such a large majority in Parliament that it only provides a limited check on the executive. Judicial review can at least ensure that the executive acts in a lawful manner.

We have both been privileged to practise within this area of law. It has enabled us to participate in litigation of fundamental importance to very many people. We hope that this book will give readers the basic skills to practise in this area and will assist readers to make up for any lack of experience.

There are a large number of people whom we need to thank for their assistance in the preparation of this book. First, we need to thank Jackie and Jose Luis for all their support and understanding. We also need to thank Navtej Ahluwalia, Nick Armstrong and Judith Farbey for agreeing to read proofs of this book. Any mistakes, however, are ours and not theirs. We also appreciate the support of all at 14 Tooks Court and in particular the clerks including Martin Parker, Jason Housden and Simon Gardner. Jordans have been extremely helpful and we would like to thank Martin West and Gary Hill. Finally we would like to thank Kate, Rebecca, Orla, and Tommy.

We should apologise that we have used male terminology throughout this book. We had hoped to produce a gender neutral book but this has proved impossible. We hope that our readers will recognise that our use of male terminology is not based on any sexist assumptions.

We have tried to state the law at 1 September 2003.

Hugh Southey
Sir Adrian Fulford
December 2003

TABLE OF CASES

References are to paragraph numbers. References in Italics are to page numbers in Parts II–IV

A v United Kingdom (1998) 27 EHRR 611, [1998] 2 FLR 959, 5 BHRC 137, ECHR	282
Adams v Advocate-General for Scotland; <i>sub nom</i> Adams, Petitioner; Adams v Scottish Ministers [2002] UKHRR 1189, 2002 SCLR 881, (2002) <i>The Times</i> , August 8, Ct of Sess	1.4.2
Agrotexim v Greece (1996) 21 EHRR 250, ECHR	1.4.2
Ahmed v Austria (1997) 24 EHRR 278, ECHR	2.16
Airey v Ireland (1979–80) 2 EHRR 305, ECHR	2.8.7(3)
Akbarali v Brent LBC; Abdullah v Shropshire County Council; Shabpar v Barnet LBC; Shah (Jitendra) v Barnet LBC; Barnet LBC v Shah [1983] 2 AC 309, [1983] 2 WLR 16, [1983] 1 All ER 226, HL	2.3
Amand v Home Secretary [1943] AC 147, HL	3.4.3, 6.2
American Cyanamid Co v Ethicon Ltd [1975] AC 396, [1975] 2 WLR 316, [1975] 1 All ER 504, HL	6.5.1
An Bord Bainne Coop Ltd (Irish Dairy Board) v Milk Marketing Board [1984] 2 CMLR 584, (1984) 128 SJ 417, (1984) 81 LS Gaz 2223, CA	1.6
Anisminic Ltd v Foreign Compensation Commission [1969] 2 AC 147, [1969] 2 WLR 163, [1969] 1 All ER 208, HL	1.7, 2.2.1, 2.5
Anufrijeva v Southwark LBC; R(N) v Secretary of State for the Home Department; R(M) v Secretary of State for the Home Department [2004] 1 FLR 8, (2003) <i>The Times</i> , October 17, CA	7.2.6
Ashton and others, Re; R v Manchester Crown Court ex parte DPP [1994] 1 AC 9, [1993] 2 WLR 846, [1993] 2 All ER 663, HL	1.5.3
Associated Provincial Picture Houses v Wednesbury Corp [1948] 1 KB 223, [1947] 2 All ER 680, [1948] LJR 190, CA	2.10, 2.11
Atalanta Amsterdam BV v Produktschap voor Vee en Vlees (No 240/78) [1979] ECR 2137, ECJ	2.16
Att-Gen v Leveller Magazine [1979] AC 440, [1979] 2 WLR 247, [1979] 1 All ER 745, HL	3.5.1
Att-Gen's Ref (No 3 of 1999) [2001] 2 AC 91, [2000] 3 WLR 1164, [2000] 4 All ER 360, CA	2.7
Att-Gen's Ref (No 2 of 2001); <i>sub nom</i> R v J (Unreasonable Delay) [2001] EWCA Crim 1568, [2001] 1 WLR 1869, [2001] UKHRR 1265, [2002] 1 Cr App R 24, CA	2.8.7(5)
B v Croydon Health Authority (No 2) [1996] 1 FLR 253, [1996] Fam Law 141, CA	9.6
Begum (Runa) v Tower Hamlets LBC [2003] UKHL 5, [2003] 2 WLR 388 [2003] 1 All ER 731, (2003) 14 BHRC 400, HL	2.2.2
Belfast Telegraph Newspapers Ltd's Application, Re. <i>See</i> R v Newtonabbey Magistrates' Court ex parte Belfast Telegraph Newspapers Ltd	
Bellinger v Bellinger [2003] UKHL 21, [2003] 2 WLR 1174, [2003] 2 All ER 593, [2003] 1 FLR 1043, HL	7.2.5
Benham v UK (1996) 22 EHRR 293, (1996) <i>The Times</i> , June 24, ECHR	2.8.7(3)
Blyth, ex parte [1944] 1 KB 532	6.2

- Boddington v British Transport Police [1998] 2 WLR 639, [1998] 2 All ER 203, (1998) 162 JP 455, HL 2.1, 2.4
- Briffett v Crown Prosecution Service; *sub nom* Briffet v DPP; CPS v Briffet [2002] EWHC Admin 841, (2002) 166 JP 66, (2002) 166 JPN 92, [2002] EMLR 12, QBD 3.5.1
- Brink's Mat Ltd v Elcombe [1988] 1 WLR 1350, [1988] 3 All ER 188, CA 5.3.1
- British Oxygen Co Ltd v Minister of Technology [1971] AC 610, [1970] 3 WLR 488, [1970] 3 All ER 165, HL 2.6.1
- Bromley LBC v GLC [1983] 1 AC 768, [1982] 2 WLR 92, [1982] 1 All ER 153, HL 2.10
- Brown v Stott (Procurator Fiscal, Dunfermline) and Another [2003] 1 AC 681, [2001] 2 WLR 817, [2001] 2 All ER 97, PC 2.8.7(5), 2.16
- Brutus v Cozens [1973] AC 854, [1972] 3 WLR 521, [1972] 2 All ER 1297, HL 2.3
- Campbell and Fell v UK (1984) 7 EHRR 165, ECHR 2.8.7(5)
- Canea Catholic Church Ltd v Greece (1999) 27 EHRR 521, ECHR 1.4.2
- Carr v Atkins [1987] QB 963, [1987] 3 WLR 529, [1987] 3 All ER 684, CA 3.4.2, 3.4.3
- Chahal v UK (1996) 23 EHRR 413, (1997) 1 BHRC 405, (1996) *The Times*, November 28, ECHR 2.16
- Clibbery v Allan [2002] EWCA Civ 45, [2002] Fam 261, [2002] 2 WLR 1511, [2002] 1 All ER 865, CA 2.8.7(5), 3.5.1
- Company, Re A. *See* Racal Communications Ltd, Re
- Collins v Jamaica (356/1989), UNHRC 1.9
- Cook v Southend Borough Council [1990] 2 QB 1, [1990] 2 WLR 61, [1990] 1 All ER 243, CA 1.4.1
- Council of Civil Service Unions v Minister for the Civil Service [1985] AC 374, [1984] 1 WLR 1174, [1984] 3 All ER 935, HL 1.8, 2.1, 2.2, 2.10, 2.16
- Council of Civil Service Unions v UK 50 DR 228 1.4.2
- Credit Suisse v Alderdale Borough Council [1997] QB 306, [1996] 3 WLR 894, [1996] 4 All ER 129, CA 1.6, 7.1
- CPS v Briffet. *See* Briffett v Crown Prosecution Service
- D, Re (1997) 17 November CO/3369/97 (unreported) 3.5.1
- D (Minors) (Adoption Reports: Confidentiality), Re [1996] AC 593, [1995] 3 WLR 483, [1995] 4 All ER 385, HL 2.8.5
- Day v Grant; R v Manchester Crown Court ex parte Williams [1987] QB 972, [1987] 3 WLR 537, [1987] 3 All ER 678, CA 3.4.3
- De Freitas v Permanent Secretary of Ministry of Agriculture, Fisheries Lands and Housing [1999] 1 AC 69, [1998] 3 WLR 675, 4 BHRC 563, PC 2.16
- DG of Fair Trading v Proprietary Association of GB [2003] ICR 836, [2001] 1 WLR 700, CA 2.8
- DPP v Cottier [1996] 1 WLR 826, [1996] 3 All ER 126, [1996] Crim LR 804, DC 2.7
- DPP v Hutchinson; DPP v Smith; *sub nom* DPP v Hutchinson; R v Secretary of State for Defence ex parte Parker; R v Same ex parte Hayman [1990] 2 AC 783, [1990] 3 WLR 196, (1990) 2 Admin LR 741, HL 2.4
- DPP v McKeown (Sharon); DPP v Jones (Christopher) [1997] 1 WLR 295, [1997] 1 All ER 737, [1997] 2 Cr App R 155, HL 2.3
- Donoghue v Poplar Housing and Regeneration Community Association Ltd. *See* Poplar Housing and Regeneration Community Association Ltd v Donoghue
- Douglas v Hello! Ltd [2001] QB 967, [2001] 2 WLR 992, [2001] 2 All ER 289, CA 6.5.1
- Eckle v Germany (1982) 5 EHRR 1 2.8.7(5)

Enderby Town Football Club v Football Association [1971] Ch 591, [1970] 3 WLR 1021, [1971] 1 All ER 215, CA	2.8.6
Engel v Netherlands (1976) 1 EHRR 647, ECHR	2.8.7(1)
English v Emery Reimbold & Strick Ltd; DJ and C Withers (Farms) Ltd v Ambic Equipment Ltd, Verrechia (t/a Freightmaster Commercials) v Commissioner of Police of the Metropolis [2002] EWCA Civ 605, [2002] 1 WLR 2409, [2002] 3 All ER 385, CA	2.14, 2.14.2
Ezeh and Connors v UK (2002) 35 EHRR 28, 12 BHRC 589, [2002] Crim LR 918, ECHR	2.8.7(1)
F (Adult: Court's Jurisdiction), Re; <i>sub nom</i> F (Adult Patient), Re [2001] Fam 38, [2000] 3 WLR 1740, [2000] 2 FLR 512, [2000] UKHRR 712	3.5.2
Fairmount Investments Ltd and Southwark London Borough Council v Secretary of State for the Environment [1976] 1 WLR 1255; <i>sub nom</i> Fairmount Investments Ltd v Secretary of State for the Environment [1976] 2 All ER 865, (1976) 120 SJ 801, HL	2.8.1, 2.8.5
Fayed v UK (1994) 18 EHRR 393, (1994) <i>The Times</i> , October 11, ECHR	2.8.7(4)
Feldbrugge v Netherlands (1986) 8 EHRR 425	2.8.7(4)
Findlay, Re; <i>sub nom</i> Findlay v Secretary of State for the Home Department [1985] AC 318, [1984] 3 WLR 1159, [1984] 3 All ER 801, HL	2.11
Findlay v UK (1997) 24 EHRR 221, (1997) <i>The Times</i> , February 27, ECHR	2.8.7(5)
Fitzgerald v Williams; O'Regan v Williams [1996] QB 657, [1996] 2 WLR 447, [1996] 2 All ER 171, CA	5.3.1
Flannery v Halifax Estate Agencies Ltd (t/a Colleys Professional Services) [2000] 1 WLR 377, [2000] 1 All ER 373, [1999] BLR 107, CA	2.14
Forrest v Brighton JJ; Hamilton v Marylebone Magistrates' Court. <i>See</i> Hamilton, Re; Forrest, Re	
Francisco Javier Jaramillo-Silva v Secretary of State for the Home Department [1994] Imm AR 352	2.12, 246
Fromançais SA v Fonds d'Orientation et de Régularisation des Marchés Agricoles (No 66/82) [1983] ECR 395, [1983] CMLR 453, ECJ	2.16
Funke v France (1993) 16 EHRR 297, ECHR	2.16
Gangadeen v Secretary of State for the Home Department. <i>See</i> R v Secretary of State for the Home Department ex parte Gangadeen	
Gashi v Secretary of State for the Home Department (Certified Case). <i>See</i> R v Secretary of State for the Home Department ex parte Gashi (Besnik)	
General Medical Council v Spackman [1943] AC 627	2.8.1
Granger v UK (1990) 12 EHRR 469, ECHR	2.8.7(3)
Griffith v Jenkins [1992] 2 AC 76, [1992] 2 WLR 28, [1992] 1 All ER 65, HL	9.2
Hadjianastassiou v Greece (1993) 16 EHRR 219, ECHR	2.14
Hamilton, Re; Forrest, Re [1981] AC 1038, [1981] 3 WLR 79; <i>sub nom</i> Forrest v Brighton JJ; Hamilton v Marylebone Magistrates' Court [1981] 2 All ER 711, HL	2.8.3, 2.8.4
Hardwick (EF), Re (1883) 12 QB 148	3.4.3
Harley Development Inc v Commissioner of Inland Revenue [1996] 1 WLR 727, [1996] STC 440, (1996) 140 SJLB 93, PC	3.3
Herbage, Re (1985) <i>The Times</i> , October 25	1.5.3
Hillingdon LBC v CRE. <i>See</i> R v CRE ex parte Hillingdon LBC	
Hinds v The Queen [1977] AC 195, [1976] 2 WLR 366, [1976] 1 All ER 353, PC	3.1.3
Hoffman-La Roche & Co AG v Secretary of State for Trade and Industry [1975] AC 295, [1974] 3 WLR 104, [1974] 2 All ER 1128, HL	2.8.5

- Holden & Co v Crown Prosecution Service (No 2). *See* Steele Ford & Newton v Crown Prosecution Service (No 2)
- IRC v National Federation of Self-Employed and Small Businesses Ltd [1982] AC 617, [1981] 2 WLR 722, [1981] 2 All ER 93, HL 1.4.1
- IRC v Rossminster. *See* R v IRC ex parte Rossminster
- James v UK (1986) 8 EHRR 123, ECHR 2.8.7(4)
- Johnson v Leicestershire Constabulary (1998) *The Times*, October 7, QBD 2.8
- Jordebo Foundation of Christian Schools v Sweden 61 DR 92 2.8.7(4)
- Kanda (B Surinder Singh) v Government of the Federation of Malaya [1962] AC 322, [1962] 2 WLR 1153; *sub nom* Kanda v Government of Malaya 106 SJ 305, PC 3.8
- Kaufman v Belgium 50 DR 98 2.8.7(5)
- Khan v Secretary of State for the Home Department. *See* R v Secretary of State for the Home Department ex parte Gangadeen
- Kiam v MGN Ltd (Costs) [2002] EWCA Civ 66, [2002] 1 WLR 2810, [2002] 2 All ER 242, [2002] EMLR 504, CA 9.10
- Klass v Germany (1979–80) 2 EHRR 214, ECHR 1.4.2
- König v Germany (1978) 2 EHRR 170, ECHR 2.8.7(4), 2.8.7(5)
- Kruse v Johnson [1898] 2 QBD 91 2.13
- Lam v UK application 41671/98 3.1.1
- Lauko v Slovakia (2001) 33 EHRR 40, [1998] HRCD 838, ECHR 2.8.7(1)
- Lawal v Northern Spirit Ltd [2003] UKHL 35, [2003] ICR 856, [2003] IRLR 538, HL 2.8.7(4)
- Leech v Deputy Governor of Parkhurst Prison. *See* R v Deputy Governor of Parkhurst Prison ex parte Leech; R v Deputy Governor of Long Lartin Prison ex parte Prevot
- Lindsay v Customs & Excise Commissioners [2002] EWCA Civ 267, [2002] 1 WLR 1766, [2002] 3 All ER 118, [2002] STC 588, CA 2.16
- Lloyd v McMahon [1987] AC 625, [1987] 2 WLR 821, [1987] 1 All ER 1118, HL 2.8.2
- Locabail (UK) Ltd v Bayfield Properties Ltd [2000] QB 451, [2000] 2 WLR 870, [2000] 1 All ER 65, CA 2.8
- M, Re; M v Home Office [1994] 1 AC 377, [1993] 3 WLR 433, [1993] 3 All ER 537, HL 6.5.1, 6.5.2, 7.2.4
- Maaouia v France (2001) 33 EHRR 42, 9 BHRC 205, ECHR 2.8, 2.8.7, 2.8.7(4)
- MacNiven (Inspector of Taxes) v Westmoreland Investments Ltd; *sub nom* Westmoreland Investments Ltd v MacNiven (Inspector of Taxes) [2001] UKHL 6, [2001] 2 WLR 377, [2001] 1 All ER 865, [2001] STC 237, HL 2.3
- Malloch v Aberdeen Corporation [1971] 1 WLR 1578, [1971] 2 All ER 1278, 1971 SC 85, HL 2.8.1
- Marlowe, ex parte, R v Marlowe [1973] Crim LR 294, DC & CA 1.5.3
- Mass Energy Ltd v Birmingham City Council [1994] Env LR 298, CA 5.8
- Medcalf v Mardell [2002] UKHL 27, [2003] 1 AC 120, [2002] 3 WLR 172, [2002] 3 All ER 721, HL 9.9
- Mercury Energy Ltd v Electricity Corporation of New Zealand Ltd [1994] 1 WLR 521, (1994) 138 SJLB 61, PC 1.2, 2.2.2, 2.3
- Mills (Kenneth Anthony Paton) v HM Advocate (No 2); Chochrane (John) v HM Advocate [2002] UKPC D2, [2003] 3 WLR 1597, 2002 SLT 939, [2002] UKHRR 1074, PC 2.8.7(5)

Minister of Foreign Affairs, Trade and Industry v Vehicles and Supplies Ltd [1991] 1 WLR 550, [1991] 4 All ER 65, (1991) 135 SJLB 12, PC	6.4
Moustaquim v Belgium (1991) 13 EHRR 802, ECHR	2.16
Newport Association Football Club Ltd v Football Association of Wales Ltd [1995] 2 All ER 87, (1994) 144 NLJ Rep 1351, ChD	6.5.2
Nordh v Sweden Application No 14225/88, 3 December 1990, ECHR	2.8.7(4)
Norris v Ireland (1991) 13 EHRR 186, ECHR	1.4.2
Open Door Counselling Ltd and Dublin Well Woman Centre v Ireland (1992) 15 EHRR 244, ECHR	1.4.2
O'Hara v Chief Constable of the Royal Ulster Constabulary [1997] AC 286, [1997] 2 WLR 1, [1997] 1 All ER 129, HL	2.6
O'Reilly v Mackman; Millbanks Secretary of State for the Home Department [1983] 2 AC 237, [1982] 3 WLR 1096, [1982] 3 All ER 1124, HL	1.6, 2.7, 2.8
Öztürk v Germany (1984) 6 EHRR 409, ECHR	2.8.7(1)
Padfield v MAFF [1968] AC 997, [1968] 2 WLR 924, [1968] 1 All ER 694, HL	2.14
Pauger v Austria (1997) 25 EHRR 105, ECHR	2.8.7(5)
Pepper (Inspector of Taxes) v Hart [1993] AC 593, [1992] 3 WLR 1032, [1993] 1 All ER 42, HL	5.13.2
Persaud v Persaud [2003] EWCA Civ 394, [2003] PNLR 26	9.9
Pine Valley Developments Ltd and Others v Ireland (1991) 14 EHRR 319, ECHR	1.4.2
Poplar Housing and Regeneration Community Association Ltd v Donoghue [2001] EWCA Civ 595, [2002] QB 48, [2001] 3 WLR 183; <i>sub nom</i> Donoghue v Poplar Housing and Regeneration Community Association Ltd [2001] 2 FLR 284, CA	1.5.2, 7.2.5
Porter v Magill [2001] UKHL 67, [2002] 2 AC 357, [2002] 2 WLR 37, [2002] 1 All ER 465, HL	2.8, 2.8.7(5)
Practice Direction (Citation of Authorities) [2001] 1 WLR 1001, [2001] 2 All ER 510, [2001] CPLR 301	5.2.2, 245, 273, 414
Practice Direction (Hansard Citation) [1995] 1 WLR 192, [1995] 1 All ER 234	5.13.2
Practice Direction (Magistrates' Court Contempt) [2001] 1 WLR 1254, [2001] 3 All ER 94, [2001] 2 Cr App R 17	2.8.4
Practice Direction (Uncontested Proceedings: Crown Office List (Applications Outside London): Judicial Review) [1983] 1 WLR 925, [1983] 2 All ER 1020, 77 Cr App R 184	3.1.2
Practice Note (CA: Civil Division: Handing Down of Reserved Judgments) [2002] 1 WLR 344, [2002] 1 All ER 160, (2002) <i>The Times</i> , January 4	8.1.6
Practice Statement (Administrative Court)	5.1.2
Practice Statement (Administrative Court: Listing and Urgent Cases) [2002] 1 WLR 810, [2002] 1 All ER 633, [2002] ACD 64, QBD	5.13.1, 227
Practice Statement (Supreme Court Judgments) [1998] 1 WLR 825, [1988] 2 All ER 667, [1998] 2 Cr App R 144, Sup Ct	5.2.2
Practice Statement (Supreme Court Judgments) (No 2) [1999] 1 WLR 1, [1999] 1 All ER 125, [1999] 1 FLR 314, Sup Ct	5.2.2
Procola v Luxembourg (1995) 22 EHRR 193, ECHR	2.8
Purcell v Ireland 70 DR 262	1.4.2
Pyx Granite Co Ltd v Ministry of Housing and Local Government [1958] 1 QB 554, [1958] 2 WLR 371, [1958] 1 All ER 625, CA	2.6

- R v Advertising Standards Authority ex parte Insurance Services (1990) 2 Admin LR 77, (1990) 9 Tr LR 169, [1990] COD 42, DC 1.5.1
- R v Arts Council of England ex parte Women's Playhouse Trust [1998] COD 175, (1997) *The Times*, August 20, QBD 5.10.4
- R v BBC ex parte Lavelle [1983] 1 WLR 23, [1983] 1 All ER 241, [1983] ICR 99 1.5.1, 1.6
- R v Bakewell Magistrates' Court and Derbyshire CPS ex parte Brewer [1995] COD 98, QBD 2.8.2
- R v Barnsley Metropolitan Borough Council ex parte Hook [1976] 1 WLR 1052, [1976] 3 All ER 452, (1976) 74 LGR 493, CA 5.7
- R v Barry (Glamorgan) JJ ex parte Nagi Kashim [1953] 1 WLR 1320, [1953] 2 All ER 1005, 97 SJ 742, DC 2.9
- R v Bedwelty Justices ex parte Williams [1997] AC 225, [1996] 3 WLR 361, [1996] 3 All ER 737, HL 2.2.1, 2.3
- R v Belfast Recorder ex parte McNally [1992] NI 217 2.2.1
- R v Belmarsh Magistrates' Court ex parte Gilligan [1998] 1 Cr App R 14, [1997] COD 342, QBD 7.2
- R v Birmingham City Juvenile Court ex parte Birmingham City Council [1988] 1 WLR 337, [1988] 1 All ER 683, [1988] 1 FLR 424, CA 2.8.6
- R v Board of Visitors of HM Prison The Maze ex parte Hone; Same v Same ex parte McCartan [1988] AC 379, [1988] 2 WLR 177, [1988] 1 All ER 321, HL 2.8.6
- R v Board of Visitors of Hull Prison ex parte St Germain [1979] QB 425, [1979] 2 WLR 42; *sub nom* R v Hull Prison Board of Visitors ex parte St Germain [1979] 1 All ER 701, CA 3.4.1, 3.4.3
- R v Bournemouth Crown Court ex parte Weight [1984] 1 WLR 980, [1984] 2 All ER 673, (1984) 79 Cr App R 324, HL 1.5.3
- R v Bow Street Metropolitan Stipendiary Magistrate and others ex parte Pinochet Ugarte (No 2) [2000] 1 AC 119, [1999] 2 WLR 272, [1999] 1 All ER 577, HL 2.8
- R v Brighton & Hove Magistrates' Court ex parte Clarke (1997) *Archbold News*, June 3.1.1
- R v Bristol Crown Court ex parte Cooper [1990] 1 WLR 1031, [1990] 2 All ER 193, [1990] COD 312, CA 2.8
- R v Bristol Justices ex parte Hodge [1997] QB 974, [1997] 2 WLR 756, [1996] 4 All ER 924, QBD 9.5
- R v Bromley Licensing JJ ex parte Bromley Licensed Victuallers' Association [1984] 1 WLR 585, [1984] 1 All ER 794, (1984) 148 JP 495 2.7
- R v Burton ex parte Young [1897] 2 QB 468 2.8
- R v Burton upon Trent JJ ex parte Hussain (1997) 9 Admin LR 233, (1996) 160 JP 808, (1996) 160 JPN 1078, QBD 2.14
- R v Camborne JJ ex parte Pearce [1955] 1 QB 41, [1954] 3 WLR 415, [1954] 2 All ER 850, DC 5.4
- R v Cambridge JJ and the Chief Constable of Cambridgeshire Constabulary ex parte Peacock [1993] COD 19, [1993] Crim LR 219, DC 2.9
- R v Camden LBC ex parte Paddock [1996] CLY 3691, CA 2.8.5
- R v Camden LBC ex parte Martin [1997] 1 WLR 359, [1997] 1 All ER 307, [1997] 1 FLR 950, QBD 9.9
- R v Cardiff Crown Court ex parte Jones [1974] QB 113, [1973] 3 WLR 497; *sub nom* R v Crown Court at Cardiff ex parte Jones [1973] 3 All ER 1027, DC 1.5.3
- R v Central Criminal Court ex parte Crook (1984) *The Times*, November 8 1.5.3
- R v Central Criminal Court ex parte Francis and Francis [1989] AC 346, [1988] 3 WLR 989, (1988) 132 SJ 1592, HL 2.5
- R v Central Criminal Court ex parte Raymond [1986] 1 WLR 710, [1986] 2 All ER 379, (1986) 83 Cr App R 94, DC 1.5.3
- R v Central Criminal Court ex parte Simpkins (1998) *The Times*, October 26, QBD 3.5.2

R v Central Criminal Court and Nadir ex parte Director of the Serious Fraud Office [1993] 1 WLR 949, [1993] 2 All ER 399, (1993) 96 Cr App R 248, DC	1.5.3
R v Ceredigion County Council ex parte McKeown [1998] 2 PLR 1, [1998] PLCR 90, [1997] COD 463, QBD	3.1.1
R v Chief Constable of the North Wales Police ex parte AB; <i>sub nom</i> R v Chief Constable of the North Wales Police ex parte Thorpe [1999] QB 396, [1998] 3 WLR 57, [1998] 3 All ER 310, CA	3.4.3
R v Chelmsford Crown Court ex parte Chief Constable of the Essex Police [1994] 1 WLR 359, [1994] 1 All ER 325, (1994) 99 Cr App R 59, DC	1.5.3
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HL 5.2.1
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DC 1.5.1
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