Judicial Remedies in Public Law

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JUDICIAL REMEDIES IN PUBLIC LAW

by

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WITH A FOREWORD BY

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FOREWORD

The judge-led development of public law in this country since the decision of the House of Lords in *Anisminic Ltd.* v. *Foreign Compensation Commission* [1969] 2 A.C. 147 has been both remarkable and widely welcomed. That development has been greatly facilitated by the creation of the judicial review procedure in 1977. Through use of this procedure the courts have been enabled to demonstrate over the past decade their willingness to grant relief in areas into which hitherto they would not go. Invitations to enter new areas continue to be extended in particular to areas which are governed by disciplinary, regulatory and visitorial bodies. In addition invitations to grant relief where none could even have been contemplated a short while ago, are now extended so as to raise perplexing and constitutional issues concerning, for example, the position of the Crown and its ministers.

The development means that the subject of remedies in public law cannot any longer be regarded as the arcane subject which once it was. Although in particular circumstances there are particular methods of challenge (for example, there may be an available statutory challenge), it is the remedy by judicial review which has assumed pre-eminent importance not only because of the areas into which it now extends but also because of its exclusivity. The rate of growth in the number of those who seek relief through that remedy since 1977 has been explosive and there is no sign of any abatement. The decisions upon remedies and their availability have become a multitude and in addition there are many learned commentaries. Community law makes its own contribution. In sum the material can now daunt by its volume and spread.

In his book Mr. Clive Lewis has demonstrated his mastery of concepts and material to the benefit of us all. The total range and availability of the remedies are described and discussed within a most admirable structure. A principal beneficiary of the structure will be the busy practitioner who is thereby enabled easily to find where to look for help on his problem. When he looks he will find a comprehensive treatment and will at once become in Mr. Lewis's debt. I am sure that this book will be received as a most welcome addition to the Litigation Library.

March 1992 Michael Mann

PREFACE

Remedies have always been central to the system of public law in England. This work sets out to describe the modern system of remedies in public law. This is an area of law that has undergone profound changes in recent years. The changes have resulted in part from the new procedural machinery for seeking judicial review introduced by the reforms to Order 53 fifteen years ago. These reforms altered the procedural machinery. They also provided an impetus for the rapid expansion and development of judicial control over public bodies. The changes also reflect the natural development of any area of law as new themes, such as the growing importance of remedial discretion of the courts, emerge over time. In addition, the system of public law, like all areas of English law, has had to adapt to take account of the new demands of European Community law.

The aim of this work is twofold. First, it seeks to offer a description and analysis of the different public law remedies. The work concentrates on the remedy of judicial review but also deals with habeas corpus, statutory appeals and applications to quash, the principles governing public authority liability and remedies for enforcement of European Community law. Secondly, the work aims to offer a modern approach to public law remedies. The structure, content and emphasis of the book is intended to reflect the changes that have occurred over recent decades.

There are a number of people whom I wish to thank. They include Yvonne Cripps and John Spencer (of Cambridge University), Lynne Knapman (of the Crown Office) and Simon Steel who read and commented on parts of the book. One of my students, David Shaw, acted as a research assistant in the final stages of production. Members of the bench patiently answered questions on law, practice and procedure. I also owe a debt of gratitude to friends and colleagues at 4/5 Gray's Inn Square. Responsibility for any errors rests with the author.

I have endeavoured to set out the law as it stood at November 1, 1991. In some instances, it has been possible to incorporate subsequent developments, notably the European Court decision on state liability for damages for breach of European law in the *Francovich* decision of November 19, 1991.

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