



Environmental Health Case Law Update

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Outline

- The hierarchy of the courts and precedence
- Conflicting judgments and distinguishing
- When the courts can change their minds
- Some recent cases – background, decision, impacts
- Summary
- Questions



Case law and the hierarchy of the courts

- Precedence
 - Only set by higher courts – High Court/Upper Tier Tribunals, Court of Appeal, Supreme Court (used to be the House of Lords) plus CJEU (used to be the ECJ), and ECtHR
 - Binding precedence – must be followed by the lower courts
 - Only the points supporting the reasons for the decision
 - Persuasive precedence – lower courts should consider, and likely challenge if they ignore
 - Will include other points made by the higher court
 - Old cases often still valid – particularly if re-affirmed



Conflicting decisions and distinguishing

- Common reasons for conflicting case law
 - An earlier case or cases not cited
 - Relevant facts/evidence not presented
 - Majority judgement based on different reasoning
 - The trial judge concludes the facts are materially different in their case - and so distinguishes their case
 - The trial judge doesn't think much of the previous decision so makes sure they conclude the facts are materially different!
- The courts can end up with two conflicting lines of decisions
- This can only be resolved by an appeal to a higher court or a change in the legislation



The “Greggs” case

- Background
 - Hull CC served notices* on Greggs requiring toilet and washing facilities at two outlets which had seats for customers
 - Newcastle CC is the Primary Authority for Greggs and issued a direction to stop this action as there were less than 10 seats
 - NCC had changed their guidance following a county court case
 - HCC referred the direction to BRDO (now OPSS)
 - BRDO confirmed the HCC direction on the basis that it believed NCC’s interpretation was a correct one**



The “Greggs” case

- The High Court decision*
 - There can only be one correct interpretation of the law
 - The courts not BRDO/SoS are the ones to decide what this is
 - The NCC/BRDO interpretation in this case was manifestly wrong, so the direction was quashed
 - The judge set out his view of how the PA scheme should work
- Appeal – discontinued in June 2017
- Problems
 - SoS must revoke a direction unless correct interpretation**!
 - This case involved only a discretionary notice - power not duty
 - What happens if no relevant case-law?



R (on the application of Shasha) v Westminster City Council*

- Background
 - Under 2014 Regulations**, all delegated decisions about the grant of a licence or permission etc., or which affect an individual, must be recorded and published in the same way as for executive decisions.
 - Confusion over which level had the delegated authority.
 - The planning case officer had submitted a detailed report.
 - The delegated decision was not recorded and published in the way required.



R (on the application of Shasha) v Westminster City Council*

- The High Court decision
 - The 2014 Regulations applied to planning decisions - despite previous removal of need for reasons on grant!
 - From previous case law if no other reasons given, assumed the decision only based on any reports submitted.
 - In the absence of proper records, Council could not bring in new material when challenged.
 - Decision quashed applying usual Judicial Review principles.



London Borough of Hounslow v Aslim*

■ Background

- A ran premises with “special treatments” licence**
- Requirements included children <16 had to have written parental consent, children 16-18 had to have this or valid photo-id. Records of all treatments had to be kept.
- Girl of 14 had belly piercing done with fake photo-id, and telephone number for “father” who confirmed.
- Lots of records defective, so LBH prosecuted for two offences.
- Magistrates acquitted on both counts – sufficient that A believed girl >16 and id to be genuine. LBH had not proved that all records were about licensable events.



London Borough of Hounslow v Aslim*

- High Court
 - A's belief was irrelevant – this was a strict liability offence and all LBH had to do was to prove girl <16.
 - More than enough evidence that at least some of the records did not comply with the licence requirements.
 - Sent back to magistrates with a direction to convict on both counts.
 - Leading judgement sets out the principles for establishing an offence is a strict liability one, and no *mens rea* needed.**



Stone and Salhouse Norwich Ltd v Environment Agency*

- Background
 - S & S were the company and one of its Directors who had leased off land to a third party, which ran a mattress recycling business covered by a Permit**.
 - They were both convicted of offences for the continued storage of >400 tonnes of mattresses for >1 year after operation ceased.
 - They appealed over two months late on two points of law – this was not a waste operation, and they had not actively contributed to the problem continuing.



Stone and Salhouse Norwich Ltd v Environment Agency*

- High Court
 - On the lateness, the 3 step test** was applied, and it was just to allow the appeal to be heard despite the EA's objections.
 - The mattresses were waste – storage before recovery or disposal is a regulated activity.
 - To prove “knowingly permitting” did not require evidence of active involvement, it was sufficient to show that the defendants knew that the operation (the storage) was continuing, and took no effective steps to prevent it.
 - Both appeals were dismissed.



Network Rail Infrastructure Ltd v Williams and Waistell*

- Background
 - W & W owned semi-detached houses next to a railway embankment on which there was Japanese Knotweed.
 - NRI knew about its existence and had taken limited, irregular and ineffective steps to get rid of it.
 - The roots and rhizomes had penetrated W & W's land but had not caused damage to the property.
 - The County Court agreed that damage was necessary to sue for "encroachment" nuisance, but held that JK's presence affected the use and amenity of the houses.



Network Rail Infrastructure Ltd v Williams and Waistell*

- Court of Appeal
 - The presence of JK roots etc. was sufficient to prove an adverse effect on amenity value of the houses.
 - A mandatory injunction was appropriate based on the probability of harm and its severity, not imminence.
 - Damages could be awarded on the basis of the interference with the use and enjoyment of the land.
 - Private nuisance was about effects on property rights, but boundaries between the three categories could not be rigid.



Nottingham City Council v Parr etc.

■ Background

- NCC had prohibited the use of attic rooms for sleeping in two licensed HMOs unless let with another room for exclusive use.
- These HMOs were let to students.
- The rooms were bigger than 8m² in floor area – the standard adopted by NCC for one adult. Sloping ceilings reduced this.
- In the FTT the landlords' appeal was successful – the relevant conditions were deleted on the basis there was sufficient shared space. For one of the HMOs a new condition restricted the letting to a full-time student and <10 months a year.
- The UT dismissed NCC's appeal, and inserted the new condition into the licence for the other HMO.



Nottingham City Council v Parr etc.

- Court of Appeal decision*
 - NCC argued that the licence conditions could only relate to the physical characteristics of the property, not the personal characteristics of the occupiers.
 - NCC also argued that the conditions were irrational and unenforceable.
 - The Court unanimously rejected these arguments.
 - The Court allowed the use of the attic rooms, but with conditions to the licences requiring communal rooms and kitchens, and restricting the lettings to full-time students.



Nottingham City Council v Parr etc.

- Supreme Court decision*
 - S64 & 67 of HA2004 allow licence conditions that reflect the mode of occupation of the HMO including by students
 - The Tribunals and CA had not been irrational, defects to the original Tribunal decisions corrected by CA.
 - The Court further varied the conditions to allow such occupation for 12 rather than 10 months of the year.
 - Due to the 2018 Regulations** one of the two rooms anyway has become suitable for single occupation.



Fouladi v Darout Ltd and others*

- Background
 - D1 (leaseholders) had carried out works including to the floors of their flat, and had neither got the freeholders agreement to these works nor had they considered the effects of noise transmission. F sued D1, D2 & D3 (the occupiers) and D4 (freeholders) for nuisance.
 - Council required some works but not to the sound insulation as much of the noise complained of was “everyday noise”.
 - Trial judge found D1, D2, and D3 liable in nuisance and critical of Council. Damages awarded against all three, and mandatory injunction against D1 to provide insulation. D4 not liable.



Fouladi v Darout Ltd and others*

- High Court decision
 - Upheld trial judge's decision in all respects.
 - Ample evidence to show that the everyday noise was a nuisance, and *Stannard v Charles Pitcher Ltd*** followed.
 - Clear evidence that the works to the floors had not been part of the scheme approved by the freeholders, and that the floors did not comply with the Building Regulations.
 - The leaseholders were also in breach of other terms of their lease relating to the provision of carpets and underlay etc.
 - The common landlords would only be liable if they had authorised the nuisance or participated in it.



Statutory Nuisance Research

- Part of my PhD fieldwork includes a repeat of the 2014 online survey done through CIEH.
- This is now live and can be found at:
<https://www.surveymonkey.co.uk/r/T9YLV79>
- There is more information of the project attached to the survey.
- Please take part and share with colleagues who you know regularly use the SN procedure!



Stannard v Crown Prosecution Service*

■ Background

- S warned in 2/2018 about anti-social behaviour in Reading Town Centre near McDonalds, and likely CPN**.
- Next day Police called to incident involving group there.
- CPN served on the spot, restricting his access to the town centre, going near any McDonalds, and associating with a group of 4 or more youths anywhere. Indefinite duration.
- Few days later in restricted area. Prosecuted not FPN. S did not appeal but challenged validity of CPN at trial and argued no case to answer as no evidence submitted on this.
- District Judge allowed case to proceed and convicted S.



Stannard v Crown Prosecution Service

■ High Court

- The rules in Galbraith on dealing with a submission of no case to answer were re-affirmed**.
- It is unnecessary to prove a CPN was valid in prosecuting for a breach of one of its terms. Any such challenge should be raised on appeal when it is served.
- The issuing authority has an implied power to vary or discharge a CPN on an application from the recipient.
- The Court set out how they thought authorities should use these implied powers, and reaffirmed that CPNs should be time-limited and that any terms attached should be proportionate.



Summary

- There is a lot of relevant case-law out there
- Reports of big criminal court fines are always newsworthy – but may be of little legal impact
- New cases are heard every month which may set new precedents or alter previous ones
- Some of the important cases are not directly linked to EH legislation – the Common Law is alive and kicking!
- Bismarck!*



Questions?



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