Core Curriculum: Module 2: Decision-making and Challenge: Materials for Micro site

Essentials 2: Decision

This section introduces a fictional case study which will be developed through the rest of the Part.

This section also covers the key things to be considered when advising on public law decision-making, building on previous learning on consultation and legitimate expectation in Essentials 1, and looking at powers, bias, pre-determination and independence, and factors relevant to decision-making. This section also introduces the concepts of rationality and proportionality.

Case study: Introduction

*Note: the case study used throughout this part is fictional. Please put aside any knowledge you may have about the law relating to road traffic crimes or any similar compensation scheme.*

* Under a scheme (“the Scheme”) made under the Victims of Road Traffic Crimes Act 1968 (“the 1968 Act”), injured victims of road traffic crimes are entitled to receive financial awards, funded by the tax payer, to assist them in relation to their injuries. The Scheme is intended to be a scheme of last resort, where no other source of compensation is realistically available.

* The Scheme has been in place since 1970, and has been reviewed and amended periodically through a Statutory Instrument made under the 1968 Act. The core of the Scheme remains the same, namely to provide awards to help with practical assistance required by victims who suffer physical or psychiatric injury as a result of road traffic crime. The Scheme costs £50m a year, including running costs.
* Section 1 of the 1968 Act states:

*“(1)The Secretary of State shall make arrangements for the payment of compensation to, or in respect of, persons who have sustained one or more injuries as a direct result of the commission of a road traffic offence in the United Kingdom.*

*(2) Any such arrangements shall include the making of a scheme providing, in particular, for—*

*(a) the circumstances in which awards may be made; and*

*(b) the categories of person to whom awards may be made.”*

* Since 1980, the UK has been a party to a Council of Europe Convention on assistance to victims of road traffic crime. The Convention provides that States Parties: “*must have in place measures to provide financial assistance to victims of road traffic crime, covering reasonable assistance to enable them to recover from serious physical and psychiatric injury*”. The UK relies on the Scheme as the basis of its compliance with its obligations under the Convention.
* There are no relevant European Union obligations.

Policy proposal

* Following its Spending Review settlement, in which your Department is aiming to cut its total spend by 25%, Ministers are looking at all areas of Departmental spending.
* In relation to the Scheme, Ministers state that:
  + They are minded to abolish the Scheme altogether; or
  + In the alternative, they wish to reform the Scheme so that:

(i) only British nationals may receive compensation under the Scheme;

(ii) only those with no (unspent) criminal convictions can receive compensation under the Scheme; and

(iii) compensation will only be paid in relation to the most serious long-term physical injury. Compensation will no longer be paid for psychiatric injury.

Reading

Please read the following materials:

(NB – remember to open Practical Law first to ensure that the links work)

A checklist of key aspects of good decision-making:



Practical Law article: “Decision-making by public bodies: avoiding legal challenge”: <http://uk.practicallaw.com/6-383-9998?q=decision-making+by+public+bodies>

LION note: “Bias, pre-determination and independence”:



Practical Law article: “Proportionality: what does it mean and when does it need to be applied?”:

<http://uk.practicallaw.com/9-506-4695?q=rationality+and+proportionality>

Practical Law article: “Duty to give reasons”:

<http://uk.practicallaw.com/9-513-7970?q=duty+to+give+reasons>

Civil Service Guidance to the Public Sector Equality Duty:



Consider the following questions, based on the case study:

Powers

1. Ministers have stated that they are minded to abolish the Scheme altogether. What do you need to consider in order to advise whether this is legally possible?

Legitimate expectation

2. Your policy colleagues tell you that these Ministers have made a number of previous statements about the continuation of the Scheme, both in Parliament and to relevant victims’ groups. What do you need to consider in order to advise on the possible legal effect of these statements?

Consultation

3. Ministers are not minded to consult on the proposals, on the basis that they are unlikely to be popular. What do you need to know to advise on whether there is a legal duty to consult?

4. Policy colleagues say that they don’t have time to look through the files on previous changes to the Scheme before putting advice to Ministers on the consultation and legitimate expectation issues. How might you manage this?

5. Following advice, Ministers do decide to consult on reforming rather than abolishing the Scheme. However, due to the pressure to make savings as quickly as possible, they are minded to consult for three weeks, and to make the consultation document as short as possible (no more than 5 sides). What do you advise?

6. Following advice, the consultation period is extended to six weeks, and is due to close on 30th April. The project plan shows the Statutory Instrument reforming the Scheme to be laid in Parliament on 6th May. What do you advise?

Decision

7. There are 75 consultation responses, the vast majority of which are against reform. The main issues raised are that:

(i) the proposal in relation to British nationals is discriminatory and unfair;

(ii) the proposal in relation to criminal convictions is unfair and disproportionate in that any minor, unrelated, previous conviction would result no award, even in cases of serious injury; and

(iii) the proposal to remove support for psychiatric injury is discriminatory and fails to appreciate the debilitating effect of such injuries.

What do you advise about the effect of these responses on the Minister’s final decision?

8. You attend a meeting in which it is indicated to you that Ministers have already made their minds up on the criminal convictions proposal and will not change their minds, regardless of the responses. What would you say in response to this kind of issue?

9. You are advising on the submission which will form the basis of Ministers’ final decisions on reform. It is due to be submitted next week, but policy colleagues tell you that due to time pressures they plan to carry out their equality analysis after submission but before the Statutory Instrument is laid in Parliament. What do you advise?

Now, watch this webinar for a discussion of the issues: [Insert link to webinar].

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