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“Top 10 JR Cases 2012/13”
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During my presentation, I propose to highlight some of the key legal issues and challenges facing local authorities during 2012/13 in the following 10 cases, which are not solely limited to dealing with Judicial Review procedural aspects, but I have taken the approach of covering those cases that have or will continue to have a much wider importance and significance for local government: -

A Supreme Court and Court of Appeal Cases:

1. ***Barkas v North Yorkshire County Council*** [2012] EWCA Civ 1373 (23 October 2012);
2. ***Birmingham City Council v Abdulla & Ors*** [2012] UKSC 47 (24 October 2012);
3. ***Gallastegui, R (on the application of) v Westminster City Council & Ors*** [2013] EWCA Civ 28 (29 January 2013);
4. ***Sharif v The London Borough of Camden*** [2013] UKSC 10 (20 February 2013);
5. ***Stirling, R (on the application of) v London Borough of Haringey*** [2013] EWCA Civ 116 (22 February 2013);
6. ***R. (on the application of Hemming (t/a Simply Pleasure Ltd)) v Westminster City Council*** Court of Appeal (Civil Division), 24 May 2013;
7. ***Cusack v London Borough of Harrow*** [2013] UKSC 40 (19 June 2013);
8. ***Nash, R (on the application of) v Barnet London Borough Council*** [2013] EWCA Civ 1004 (02 August 2013)

B. Administrative Court:

9. ***R. (on the application of Lock) v Leicester City Council*** Queen's Bench Division (Administrative Court), 25 July 2012;
10. ***R. (on the application of RB) v Devon CC*** Queen's Bench Division (Administrative Court), 19 October 2012;

C Ones to watch (on appeal):

- a. ***Hunt, R (on the application of) v North Somerset Council*** [2013] EWCA Civ 57 (15 January 2013); and
- b. ***Buck v Doncaster Metropolitan Borough Council*** [2013] EWCA Civ 202 (23 January 2013).



**Dr Mirza Ahmad's
specialist expertise:**

- Public & Administrative Law
- Employment Law
- Commercial Litigation
- Personal Injury Law
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The cases deal with a range of important practical considerations for local authorities and include, for example, thorny village green applications; sex shop licensing and enforcement; adequacy of consultation and equality needs assessment processes re budget and service reductions; declaration of compatibility with ECHR and rights to peaceful protest; use of highway powers of deprive frontages of vehicular access rights; right to bring equal pay claims considered to be 'out of time' if they were filed in employment tribunals; and the perils of dismissing Chief Executives and designated statutory officers.

My recent article on the *Hemming v Westminster City Council* case (on licensing and enforcement charges) is also attached to this paper, for completeness.

In terms of the practical guidance and conclusions that emerge from the various cases for busy in-house local government practitioners, the presentation will outline the brief facts of some of the cases and summarise some of the learning points, as follows:-

1. **Village greens** - *Barkas v NY CC* - where the public had a legal right to use recreation grounds provided by a LA in the exercise of its statutory rights – eg. Housing Acts – the public exercised such use 'by right' and not "as of right". Only the latter applied to the registration of a town or village green pursuant to section 15(2) of the Commons Act 2006 –;
2. **Equality clause and equal pay claims** – *Abdulla v Birmingham CC* – this is a far reaching case which, on a proper construction of section 2(3) of the Equal Pay Act 1970, determined that a claim in respect of the operation of an equality clause could never 'more conveniently be disposed of' by an Employment Tribunal, if it was submitted outside of the 3 months time limit for the ET;
3. **Freedom of assembly and association** – *Gallastegui v Westminster CC* – the Police and LA "powers" (not a duty) to stop protesters from erecting and keeping tents in Parliament Square were not incompatible with the European Convention on Human Rights 1950, Art 6, art 10 and art 11. A line had to be drawn somewhere and, whilst the erection of a tent was not unlawful, the refusal to comply with a removal direction from the Police or the LA, without a reasonable excuse, was unlawful;
4. **Living "together", as a family** – *Sherif v Camben LBC* – a pragmatic decision, but one which could be 'abused' by unscrupulous LA's – the statutory test under section 176 of the Housing Act 1996 could be satisfied by a single unit of accommodation in which a family could live together, but it could also be satisfied by two units of accommodation if they were so located that they enabled the family to live together in practical terms;

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5. **Consultation processes** – Above cases re *Haringey LBC* - The Council Tax reduction scheme consultation was not unfair or unlawful if information about alternative funding possibilities - i.e. the Transitional Grant Scheme - whilst relevant, the change was not of such significance to require the Council to re-consult or bring to the attention of the original consultees. Furthermore, neither did that consultation process have to provide information about other options that had been rejected by the LA;
6. **Erecting barriers to prevent vehicular access to land** – *Cusack v Harrow LBC* – Being mindful of current economic / budget pressures, this is a useful case to avoid compensation, as a LA was free to rely upon either section 66(2) or section 80 of the Highway Act 1980 to erect barriers. Section 66 involved giving compensation to the land owners, whereas no such compensation was payable under section 80;
7. **Outsourcing of public services** – *Nash v Barnet LBC* – a tale of caution for those who wish to challenge LA procurements: make sure you challenge promptly or within 3 months of the relevant decision. Here, the substance of the challenge was to the LA's earlier 2010/2011 decisions to proceed with the procurement process for the outsourcing of the functions / services and not the actual selection of the partners in December 2012. If the application had been made in time, the LA would have been in breach of the obligation to consult;
8. **Dismissing Chief Executive and Head of Paid Service** – *Lock v Leicester CC* – this case flags up the important distinction of private contractual rights (contract of employment) and public rights (statutory officer designations subject to some protection). Although the notice of dismissal conflated the two issues, it was nevertheless clear that the committee was only concerned with the post of CX – which was not a statutory post - and not the post of HPS. This case is one to watch on appeal;
9. **Procurement, public sector equality duty & Equality Needs Assessment** - The case highlights the importance of ensuring ENAs are properly drafted and considered at the right decision - making time, as both the LA and the PCT failed to discharge the public sector equality duty, under section 149 of the Equality Act 2010, when they appointed Virgin Care, as preferred bidder, for integrated care and health services for children. However, a pragmatic decision was arrived at; in that, the LA/PCT decisions were not quashed as the LA / PCT had, by Sept 2012, addressed the public sector equality duty, there would be substantial delays if the decisions were quashed and there had been no specific detriment to the claimant; and
10. **Licensing & enforcement costs** – *Hemming v Westminster CC* - see attached article on this case entitled "From Soho with love".

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