Developments in Judicial Review in 2017

Fees, Costs and Access to Justice

Shaheen Rahman QC

The UNISON case

• The fees regime
• Basis of the challenge
• Justification

The RSPB case

• Lord Reed’s Judgment
• Access to Justice and the Rule of Law
• Indirect Discrimination against women
• EU law argument upheld

• The Aarhus cost regime
• Modification of the regime
• The RSPB challenge
• Dove J’s judgment
• Regime consistent with EU law
• But constrained by requirements of CPR

• Applications for cost caps at an early stage
• Private hearings necessary
• Claimant’s own costs to be included in assessment of what was prohibitive expense

JACKSON COSTS REVIEW
• Extension of Aarhus to all JRs
• Opt out and variation of default caps to be determined at an early stage
• No power to override costs budgets

JR update
• FENSA – when will a private company be amenable to JR?
• Re M – can treatment be withdrawn from a minimally conscious patient by doctors without a best interests determination?
• **CAMPAIGN AGAINST ARMS TRADE** – is it lawful for the UK to sell arms to Saudi Arabia despite reports of use in breach of human rights in Yemen?

• **R (A and B)** – Is the Government obliged to provide free NHS abortions in Northern Ireland?

• **PALESTINE SOLIDARITY CAMPAIGN** – Can the Government prevent local authorities pursuing boycotts against Foreign states and UK defence industries?

• **CLIENTEARTH** – can the Government be required to publish a delayed consultation draft on nitrogen dioxide pollution?

• **T v WEST YORKSHIR CORONER** – Can a Coroner investigate the death of a stillborn child?

• **R (P)** – Is the police system of retaining information about past misconduct compatible with Article 8?

• **CONWAY** – does the operation of the Suicide Act 1961 breach the Article 8 rights of a motor neurone disease sufferer?

• **MINTON MORRILL** – Does the HRA give the ECHR the direct force of law in England and Wales?