

- 2 Here the Minister is the only person who can make the decision. Statute has put him in a position where he both makes the order and adjudicates upon it. In these circumstances it would be unreasonable to regard him as disqualified because he has declared a prior policy commitment (*Franklin v. Minister of Town and Country Planning* [1948] AC 87 – decision of Minister who made and confirmed an order designating Stevenage as a ‘New Town’ upheld even though he had declared his commitment to the order). (*Franklin* predates *Ridge v. Baldwin* and the decision would no longer be followed on the question of when a fair hearing is required, but remains a good illustration of what can count as bias.)

6 The duty to give reasons

Although it has long been accepted that fairness may give a person affected by a decision the right to know the case against him or her, before the decision is taken, it is only recently that the courts have accepted that fairness may require disclosure of the reasons for a decision, after the decision has been made. The courts have accepted that administrative decisions may differ from judicial decisions in that they may turn on a wide range of factors, none of which is decisive in itself. Yet if a decision-maker conceals the reasons for a decision, it may be very difficult to challenge the decision on the grounds of illegality or irrationality.

A decision-maker may, however, have a duty to give reasons where:

- statute requires it (e.g., s.10 of the Tribunals and Inquiries Act 1992, applying to listed tribunals and Ministers after a statutory inquiry)
- the decision affects the applicant so seriously that fairness requires it
- if no reasons are given there will be no means of questioning an apparently wrong decision, a decision which should be subject to review.

(*R v. Civil Service Appeal Board, ex parte Cunningham* [1991] 4 All ER 310 – decision of Civil Service Appeals Board quashed where it awarded an unusually low level of compensation for dismissal, without explanation – and *R v. Secretary of State for the Home Department, ex parte Doody* [1994] 1 AC 531.)

The next activity enables you to analyse the leading case on the duty to give reasons.

ACTIVITY 100

Duty to give reasons (allow 30 minutes)



Textbook



Online

Please read *Allen and Thompson* p. 547 (from ‘while there is no general duty . . .’ to ‘giving of reasons’). Then please access a legal database, find, and then read, part of Lord Mustill’s speech in *R v. Secretary of State for the Home Department, ex parte Doody* [1994] 1 AC 531, p. 564 (from ‘I accept without hesitation . . .’) to p. 566 (to ‘respondents are entitled to an affirmative answer on the third issue’).

Please try to answer the following questions as you read.

- 1 Does Lord Mustill say that fairness will always require that reasons be given?
- 2 Does he give any guidance as to the circumstances where a decision will affect an applicant so seriously that fairness will require the giving of reasons?
- 3 Does Lord Mustill say that reasons must always be given in order to enable decisions to be questioned via judicial review?

4 Do you think that if a decision-maker conceals his or her reasons, there will always be doubt as to the legality of the decision?

COMMENT

- 1 No. Lord Mustill expressly accepts that there is no general duty to give reasons for an administrative decision.
- 2 Obviously where a decision is taken as to the length of a prisoner's term of imprisonment, but Lord Mustill gives no further guidance. How many other administrative decisions will affect an interest as important as personal liberty?
- 3 He confines his remarks on this to the facts of the case. Is it clear from the speech when there should be 'an effective means of detecting the kind of error which would entitle the court to intervene'? In *ex parte Cunningham* the majority of the Court of Appeal suggested that the decision must 'appear wrong', before fairness would require the giving of reasons.
- 4 There may well be doubt, but will there be reasonable doubt if the decision seems justifiable on the known facts? In *R v. HEFC, ex parte Institute of Dental Surgery* [1994] 1 WLR 243 the Divisional Court took the view that a decision which turned on academic judgment of the quality of research was one which could appear lawful even if not explained.

7 Article 6 of the European Convention

Article 6 gives the individual a right to a fair trial 'in the determination of his civil rights or obligations, or of any criminal charge against him'. Although many decisions subject to judicial review will not involve determination of civil rights, the Convention will be relevant where a public authority directly decides how private rights should be exercised (for example, decisions to withdraw a licence to practise a profession (*Konig v. Federal Republic of Germany* (1971) 1 EHRR 455 – withdrawal of authorisation to practice medicine)).

The House of Lords has considered the implications of Article 6 for the fairness of administrative decisions affecting private rights, and has taken a restrictive approach. In *R v. Secretary of State for the Environment, ex parte Alconbury Developments Ltd and Others* [2001] 2 WLR 1389, it held that although ministerial planning decisions affecting use of land were subject to Article 6 it was not necessary for them to be taken by an independent body such as a planning inspector. It is perfectly proper for planning policy to be entrusted to a Minister democratically accountable to Parliament, and for the Minister to take decisions applying his own policy. The requirement for an independent decision can be satisfied if the Minister's decision is subject to effective judicial review.

8 Criticism of the concept of fairness

The requirement of procedural fairness can be linked to the doctrine of the Rule of Law. The next activity enables you to explore the link.