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**ACTIVITY 93**


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**Legitimate expectation** (allow 30 minutes)

Please read the extracts from *Council of Civil Service Unions v. Minister for the Civil Service* in *Allen and Thompson*, pp. 576–577.



In relation to *CCSU v. Minister for the Civil Service* answer the following questions:

- 1 Did the ban on union membership at GCHQ affect individual employees individually, or as a group?
- 2 Did individual employees have any private right to consultation before the ban was imposed?
- 3 Why did Lord Fraser hold that (but for the question of national security) fairness required consultation?

**COMMENT**

- 1 Although each employee was affected by the ban, would you agree that all employees were affected equally, as a group?
- 2 No. Their terms and conditions of service were regulated under the prerogative, which did not give them private rights.
- 3 Fairness required consultation because of the established practice of consulting employees before changes were made in their terms of service.

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**ACTIVITY 94**


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**Procedural legitimate expectation** (allow 30 minutes)

Please access the headnote of *R v. Liverpool Corporation, ex parte Liverpool Taxis* [1972] 3 WLR 224 DC on Lexis Library and summarise the facts, identify the ratio decidendi and state the decision.

**COMMENT***Summary of the facts*

The local authority had the power to grant taxi licences. It promised the existing cabbies that it would not increase the number of licences made available in the area without giving them the opportunity to make representations. Nevertheless, the authority breached this promise by increasing the number of licences without any consultation with existing cabbies.

**The ratio decidendi:** A promise made by a public body gave rise to a legitimate expectation (of consultation) which should not be ignored on the grounds of unfairness.

NB: The decision was not based on a duty to consult which, instead, would give rise to a ground of challenge under either procedural ultra vires or illegality.

**The decision:** The court issued what is now termed a prohibiting order to prevent the authority from acting without prior consultation.

The employees in the *CCSU* case successfully claimed that there was a procedural breach of legitimate expectation in that they should have been consulted. However, the courts have broadened the scope of legitimate expectation to include what is known as substantive legitimate expectation. This type of expectation arises in the same way but the expectation is to receive a benefit of some kind, rather than an expectation of a procedure being followed. Again,

it is important to remember that each case will turn on its own facts. This is because legitimate expectation is formed in the mind of the person affected by the decision maker's conduct.

The next activity will help you to understand the difference.

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### ACTIVITY 95

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#### Substantive legitimate expectation (allow 30 minutes)



Please read the following excerpts from the decision in *R v. North and East Devon Health Authority, ex parte Coughlan* [2000] 2 WLR 622 which you will find in *Allan and Thompson* on pp. 587–596: the introduction to give you a summary of the facts; paragraphs 57 and 83–89.

Then answer the following questions:

- 1 Which three possible outcomes were identified in respect of the court's role when considering a challenge under legitimate expectation?
- 2 Had a substantive legitimate expectation arisen in Mrs Coughlan's mind and if so, what had caused it?
- 3 What did the court need to weigh in the balance to decide whether her legitimate expectation should take priority?
- 4 What was the court's reasoning for its decision?

#### COMMENT

- 1 (a) The court may decide that the public authority is only required to bear in mind its previous policy or other representation, giving it the weight it thinks right, but no more, before deciding whether to change course.
  - (b) The court may decide that the promise or practice induces a legitimate expectation of, for example, being consulted, before a particular decision is taken.
  - (c) The court may decide that it is an abuse of power should a substantive legitimate expectation be subverted. Once the legitimacy of the expectation is established, the court will weigh the requirements of fairness against any overriding interest relied upon for the change of policy.
- 2 Mrs Coughlan had received both oral and written assurance from the health authority that she could live at Mardon House for as long as she chose to do so. She had interpreted this to mean for the remainder of her life.
- 3 The court had to consider the 'compelling reasons' put forward by the health authority for closure of Mrs Coughlan's home, i.e. that Mardon House had become 'a prohibitively expensive white elephant'.
- 4 The court decided that Mrs Coughlan did have a substantive legitimate expectation to remain in Mardon House for the remainder of her life. This expectation had arisen in her mind as a result of words and actions of the local authority, which had not properly weighed all the considerations before making its decision. There was no overriding public interest to justify the breach of her legitimate expectation.