

Public Authorities under the Human Rights Act 1998

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Section 6 HRA

- A “*public authority*” must not act in a way which is incompatible with a Convention right – section 6(1).
- No real definition – section 6(3)(b) provides that it **includes** “*any person certain of whose functions are functions of a public nature*”.
- Section 6(5) “*In relation to a particular act, a person is not a public authority by virtue only of subsection 3(b) if the nature of the act is private*”.

The view prior to the enactment of the HRA

- 3 types of public authority were envisaged:
 - (1) “*Obvious*” public authorities – government departments, local authorities, the police, prisons
 - (2) Those expressly referred to in section 6(3)(a) – “*court or tribunal*”
 - (3) “*Hybrids*” – private bodies which are subject to the HRA in respect of their “*functions of a public nature*”

“Hybrid” public authorities – what do the courts say?

- *Poplar Housing and Regeneration Community Association v Donoghue* [2001] EWCA Civ 595 – **Yes.**
- *R (on the application of Heather) v Leonard Cheshire Foundation* [2002] EWCA Civ 366 - **No.**
- *Aston Cantlow and Wilmcote with Billesley Parochial Church Council v Wallbank* [2003] UKHL 37 – **No.**
- *Hampshire County Council v Beer* [2003] EWCA Civ 1056 – **Yes.**

Poplar v Donoghue - Court of Appeal

- Court granted possession order under Housing Act 1988 in favour of a registered social landlord housing association.
- On appeal by the tenant, the issue was whether Poplar was a “*public authority*”.
- Court of Appeal found that it was.
- *“In this case, in providing accommodation for the defendant and then seeking possession, the role of Poplar is so closely assimilated to that of Tower Hamlets that it was performing public and not private functions.”*

Poplar v Donoghue

Why?

- A public act was a feature or combination of features which imposed a “*public character or stamp*”.
- In borderline cases, it is a question of fact and degree.
- Court of Appeal agreed that the definition should be given a generous interpretation.
- But **an** act will not inevitably be public simply because a public body would otherwise have to perform it.

Poplar v Donoghue

Key factors:

- Transfer of housing stock did not entail transfer of Tower Hamlets' primary public duty – Poplar merely the *means* by which it complied with that duty.
- Providing rental accommodation is not in itself a public function.
- The fact that a body is a charity or non-profit making does not necessarily mean it is a public authority.
- Statutory authority or control by another public body are not determinative.
- Closeness of relationship between Tower Hamlets and Poplar.
- Tenant still evicted!

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R (on the application of Heather) v Leonard Cheshire – Court of Appeal

- Claimant residents in a care home run by LCF, with which the local authority had made an arrangement (authorised by statute) which was the means by which the local authority complied with its statutory duty to provide accommodation.
- LCF decided to close the home.
- Residents challenged by judicial review, arguing that their Article 8 rights had been violated.
- Court of Appeal held LCF “*manifestly not*” performing public functions.

Leonard Cheshire

Why?

- Although the facts were similar to those in *Donoghue*, the “*key factors*” considered there were held to be of limited assistance.
- Public funding, although relevant, is not a conclusive indication that the body is a public authority.
- There was no “*public character or stamp*” to LCF’s functions.
- LCF had not “*stepped into the shoes*” of the local authority and was not exercising statutory powers.
- Residents for 17 years had to move elsewhere!

Aston Cantlow v Wallbank – House of Lords

- Defendants under common law duty to repair the chancel of the parish church. PCC had statutory authority to enforce that obligation.
- Defendants disputed their liability to pay the repair costs. PCC brought proceedings.
- On appeal, Defendants argued that the PCC was a “*public authority*”.
- Court of Appeal held that it was a “*core public authority*”.
- House of Lords overturned the Court of Appeal and held that the PCC was not a “*core public authority*” and not performing public functions either.

Aston Cantlow

Why?

- A “*non-governmental organisation*” for Convention purposes should not be regarded as a “*core public authority*”.
- Otherwise, it could not be a “*victim*” under Article 34 ECHR.
- The Church of England was not part of government.
- PCC, therefore, not a “*public authority*”.
- Anyway, enforcement of a civil debt was a private, not public, act.

Hampshire County Council v Beer – Court of Appeal

- HCC set up a farmers' market, where Mr Beer was permitted to sell his trout.
- Control of the market was subsequently passed to the stallholders by means of a specially incorporated company, HFML.
- Claimant's application to HFML to sell trout was refused even though the criteria for eligibility were unaltered.
- Mr Beer challenged the decision.
- Court of Appeal upheld the first instance decision - HFML was a "*hybrid public authority*" and its decision to exclude Mr Beer was the exercise of a public function.

Hampshire County Council

Why?

- The market was on publicly owned land to which the public had access.
- HFML was not simply a private company established to run a market. It was established by the local authority to continue running a market previously run by the local authority in exercise of its statutory powers.
- It had “*stepped into the shoes*” of the local authority.

Where does this leave us?

- Have the courts really applied a function test in deciding whether a “*hybrid public authority*” is performing a public function?
- How can the *Leonard Cheshire* case be reconciled with the other cases?