

Public Law Update – Part 1



Miranda Butler



Introduction

1. Secret policies and duty of candour
2. Human rights
3. Transfers
4. Urgent claims



XY: secret policies, candour, human rights

XY v SSHD [2024] EWHC 81 (Admin)

Background: *KTT v EOG* [2023] QB 351 (17.3.22): CoA upheld judgment of Linden J that victims of trafficking with outstanding asylum claims should be given LTR pending resolution of those claims. No further appeal to UKSC.

D decided not to implement this decision, but did not disclose that fact (LTR decisions made but not served).

Therefore, cohort of vulnerable recognised victims who needed leave to remain did not receive it. Even when delay challenges brought, SSHD did not disclose what was happening, but instead granted them leave.



XY v SSHD: secret policies, candour, human rights

Lawfulness:

Any unpublished policy must not be inconsistent with published policy (cf *Lumba*).

Unless and until disturbed on appeal, the finding in *KTT* meant that SSHD's policy required the granting of LTR.

His unpublished policy contradicted his public policy and was unlawful.

- Possibility of bringing a JR did not remedy this – D's response to litigation just kept the policy secret.



XY v SSHD: secret policies, candour, human rights

Human Rights:

Art. 8 ECHR was engaged by the failure to grant the claimant LTR.

Noted the distressing and destabilising impact of not holding LTR, whereas LTR would make the claimant feel more secure and promote his recovery and psychological rehabilitation.

As the policy was unlawful, SSHD's actions could not be 'in accordance with the law' for the purposes of Art. 8(2).



XY v SSHD: secret policies, candour, human rights

Duty of candour:

SSHD breached his duty of candour in failing to disclose the existence of the unpublished policy at all until amended DGDs (which partially disclosed the policy), then in heavily redacted disclosure responding to a Part 18 request and re-amended DGDs.

The claimant "*has had laboriously to drag out of the defendant*" material which should have been disclosed at least by the first DGDs.

D's approach was on which "*at almost every stage, involved revealing as little as possible, and only then in response to specific requests from the other party. The defendant's approach in the present case is about as far from the requirement of "laying one's cards face up on the table" as could be imagined.*"



XY v SSHD: secret policies, candour, human rights

Duty of candour:

On redactions on grounds of 'irrelevance':

"The present case also discloses a serious misunderstanding on the part of the defendant as to what might qualify for redaction on the ground of irrelevance. In the context of the duty of candour, particular care needs to be taken before material is withheld on this ground. Unless disclosure would be positively harmful (e.g. to a third party) or would involve a wholly disproportionate amount of disclosure, material should not, in general, be withheld on the claimed ground of irrelevance. Otherwise, there is a risk that the duty of candour will be breached or, at the very least, that the other party may be led to assume something untoward lies behind the refusal to disclose" (emphasis added)



IAB: redacting civil servants' names

IAB and ors v SSHD, SSLUHC [2024] EWCA Civ 66

Challenge to routine redaction of 'junior' civil servants' names. Powerfully rejected by CoA.

Re-emphasises the *"very high duty"* on public authority respondents to assist the court with full and accurate explanations of all relevant facts (*Quark*)

'Junior' civil servants are 98% of the Civil Service; argument is *"extraordinarily far-reaching"* – extensive redactions make it v. difficult to read documents.

Usually permissible to redact contact details.

Routine redactions are inconsistent with duty of candour, *"inimical to open government and unsupported by authority"*.



TMX: Article 3 & 8 ECHR breaches in unsuitable accommodation

TMX v LB Croydon & SSHD [2024] EWHC 129 (Admin)

Court held that Croydon had breached severely disabled man's rights under Arts. 3 & 8 by failing to assess his accommodation need or provide suitable accommodation for him and his family under the Care Act 2014.

TMX accommodated by SSHD but LA liable as it had knowledge of his situation and chose to leave him in terrible conditions. LA should have ignored possibility of accommodation being provided by SSHD when assessing his needs.

High threshold of Art. 3 met as LA know its refusal was likely to and did cause serious suffering for a prolonged period



Transfers from London

R (Bale) v HMRC [2023] EWHC 3216 (Admin)

Challenge to a minded to transfer order from London to Manchester.

"There is a general public interest that a judicial review claim should be heard in the court centre which is the Administrative Court venue for the region with which the claim is most closely connected."

Claims should not "default" to London and choice should not be driven by the convenience of lawyers.

Parties' wishes are "powerful features".

Any issue re venue should be flagged by C early on, which may assist D in their choice of (local) counsel.



Urgent claims

Swift J at recent Administrative Court User Group Meeting:

- Where C seeks an *abridgment of time* for the AOS (e.g. to 14 days), the application should be made on an N463, not within the claim form, as otherwise the request may not be looked at until 14 days before the AOS is due in any event.
- Where C seeks *expedition* of a final hearing, use of an N463 is not appropriate



Urgent claims

When to use an N463

Abridgment of time for AOS

Very urgent interim relief
(irreparable consequences)

Very urgent directions

Exceptionally urgent case: consideration reasonably required within
7 days

Not appropriate where there has been delay by claimant, or where
issue is no longer 'live' for C: see *DVP v SSHD* [2021] EWHC 606
(Admin)

NB: duty of candour v. high in making urgent applications



Urgent claims

Not-so-urgent claims

Can make application without N463 in Claim Form (or on N244 if later in proceedings) – flag fact of urgent application in covering email to ACO (*“write urgent all over it”*)





If Court does not engage: Swift J advised in AC User Group Meeting that you can escalate to Senior Legal Managers Philip Shearer and Jyoti Gill



Thank you

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