



# Case Law Update



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Thursday, 4<sup>th</sup> July 2024

# A whistle stop tour through...

**Begum  
v  
SSH D**

**The  
Rwanda  
judgment**

**R v  
Michaela  
Community  
Schools  
Trust**

**National  
Council for  
Civil  
Liberties v  
SSH D**

**Net Zero  
strategy  
case  
(round 2)**

**The SCUK  
Finch  
judgment**

# Shamima Begum v SSHD [2024] EWCA Civ 152

← Post

 **Jacob Rees-Mogg** ✓  
@Jacob\_Rees\_Mogg

There should only be one class of British citizen and that includes Shamima Begum.



From [spectator.co.uk](https://www.spectator.co.uk)

9:11 AM · Feb 26, 2024 · **2.9M** Views

3.3K 2.9K 6.5K 825

## Heartbreaking: The Worst Person You Know Just Made A Great Point

2/05/18 11:18am · Filed to: WOW



- No breach of Article 4 ECHR or common law because of failure to consider whether SB was victim of trafficking.
- No failure to consider that SB would be *de facto* stateless because of the deprivation decision.
- No procedural unfairness.
- No failure to comply with PSED.



all British citizens before the law. The ability to deprive people, who have a claim to another citizenship, of their British passport, **creates two categories of Briton**. Those with no right to another nationality are in the first-class carriage. Whatever they do, they cannot be made an exile or outlaw and expelled from the country. On the other hand, **those who themselves came to the UK or whose parents did so are in the second-class carriage**. They may be stripped of their citizenship even if they have never claimed another foreign nationality or even visited the country. This is a fundamentally racist policy as it **denies the absolute Britishness of all those who are either recent immigrants themselves or their children.**

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### TREATMENT OF THE DECISION

Nonetheless, the decision to deprive Begum of her citizenship is wrong because it attacks two linchpins of the constitution that safeguard us all. It is easy to defend constitutional principles in favour of good people, but it is more difficult to do so when it is acknowledged that someone has been involved with evil actions and organisations. Begum, by her association with and strong support for Isis, falls into the second category, but the constitution ought not to be abandoned when it is inconvenient, because a fair process routinely benefits us all.



# R (AAA (Syria) & ors) v SSHD



## non-refoulement

Requires that asylum seekers are not returned – directly or indirectly – to a country where their life or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion, or they would be at a real risk of torture or inhuman or degrading treatment





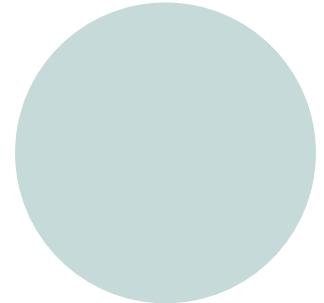
- SC found CoA was entitled to conclude there were substantial grounds to believe asylum seekers would be at real risk of ill-treatment from refoulement if taken to Rwanda because of:
  - Rwanda's poor human rights record
  - UNHCR evidence of serious and systematic defects in procedures for processing asylum claims
  - Rwanda failing to comply with an undertaking to comply with non-refoulement in an agreement with Israel....





## Safety of Rwanda (Asylum and Immigration) Act 2024

- *“every decision-maker must conclusively treat the Republic of Rwanda as a safe country”.*
- Disapplies key parts of the Human Rights Act 1998.
- Prohibits consideration of non-refoulement in individual cases.



# R v Michaela Schools Trust [2024] EWHC 843 (Admin)



## Prayer ritual policy

- Students – around 50% of whom are muslim – forbidden from any prayer rituals during the school day.
- C – a student - brought JR alleging breach of article 9 ECHR rights.
- Court found no interference with article 9 rights and any indirect discrimination was justified as a proportionate means of achieving the legitimate aims of the school as a whole.

# R (National Council for Civil Liberties) v SSHD

[2024] EWHC 1181 (Admin)



## What counts as 'serious disruption'?

- Public Order Act 1986 – police may intervene in procession or assembly to prevent “serious disruption to the life of the community”
- Police, Crime, Sentencing and Courts Act 2022 – power to amend definition of ‘serious disruption’ via secondary legislation.
- Public Order Act 2023 – attempt to define it as ‘more than minor’ in but amendments voted down.
- Public Order Act 1986 (Serious Disruption to the Life of the Community) Regulations 2023 – ‘serious disruption’ = ‘a hindrance which is more than minor’



## Divisional court judgment

- National Council for Civil Liberties (with Public Law Project intervening) challenged Regulations on four grounds: (1) *ultra vires* due to natural and ordinary meaning of words; (2) subversion of parliamentary sovereignty; (3) lack of objective justification; (4) unfair consultation.
- Court found:
  - Regulations *ultra vires*. As matter of language and context 'serious' ≠ 'more than minor'.
  - Consultation was unfair – only consulted police bodies, not any body representing protesters.
  - But not a subversion of will of parliament – *Miller No 2* did not concern balance between different exercises of parliamentary sovereignty.

# Net Zero Case (round 2)

## (1) FoE; (2) ClientEarth; (3) Good Law Project v SSNZES

[2024] EWHC 995 (Admin)

### Background

- July 2022 – Net Zero Strategy unlawful. Policies only provided for 95% of Net Zero Target in Climate Change Act 2008.
- May 2023 – revised Carbon Budget Delivery Plan.





## Judgment of Sheldon J

- New plan also breached section 13 of CCA 2008.
- Irrational to assume policies with high degree of uncertainty would be delivered in full in sense explained by Saini J in *R(Wells) v Parole Board* [2019] EWHC 2710 (Admin) at §33 (existence of an unexplained evidential gap or leap in reasoning).
- Note contrast with case law on compliance of individual carbon-intensive infrastructure projects with Net Zero Targets under CCA 2008 (e.g. *Boswell v SST, Packham v SST and HS2, GOESA v Eastleigh BC*).

# R (Finch) v Surrey CC and others

[2024] UKSC 20



- Surrey CC granted planning permission for 20 years of oil production at Horse Hill in 2019. The Environmental Statement only included information on direct greenhouse gas emissions from running the site.
- Question for the courts: are the downstream emissions from burning fossil fuels an 'indirect effect' of a fossil fuel extraction project under the Environmental Impact Assessment Directive and 2017 regulations?
- High Court – never an effect. Court of Appeal – can be an effect but it is a matter of planning judgment and they weren't here.
- Supreme Court by a 3-2 majority – always an effect.

## Open questions...

- How widely will judgment be applied?
- Will it have implications for other fossil fuel projects?
- What about other types of scheme?
- Any lessons about public participation in decision making?
- Is 'arguability' working as a threshold in JR?



# Any questions?