CONFERENCE

Case Law Update

session at

Public Law in 2025:
One Day Symposium

with Hannah Taylor and Jackson Sirica

cornerstone
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Case Law Update

Jackson Sirica – Hannah Taylor

September 2025

Darwall and another v Dartmoor National Park Authority [2025] UKSC 20

- **Factual background:** Dartmoor National Park was designated in 1951. The Commons are areas of unenclosed moorland which are privately owned, but n which other locals have a right to put livestock. Section 10(1) of the Dartmoor Commons Act 1985 makes provision for public access to the Commons. The key words are:

"*…the public shall have a right of access to the commons on foot and on horseback for the purpose of open-air recreation; and a person who enters on the commons for that purpose without breaking or damaging any wall, fence, hedge, gate or other thing, or who is on the commons for that purpose having so entered, shall not be treated as a trespasser on the commons or incur any other liability by reason only of so entering or being on the commons*."

Darwall and another v Dartmoor National Park Authority [2025] UKSC 20

- **The Issue:** The Appellant landowners sought a declaration that section 10 of the 1985 Act did not provide the public a right to camp on the commons. DNPA resisted that declaration. The Court of Appeal allowed an appeal from the High Court and found that section 10(1) did provide a right of wild camping on the Commons – insofar as conducted within the applicable byelaws. The Appellants appealed.

- **The Decision:** the UKSC dismissed the appeal. While the Court referred to a variety of aids of construction, it also found at paragraph 17(i) that, as a matter of ordinary language, camping is a form of “open-air recreation”. Therefore, the provision conferred on members of the public a right of access to the Commons, provided that it was exercised by going onto the Commons on foot or on horseback, for the purpose of camping there.

Somani Hotels Ltd v Epping Forest DC [2025] EWCA Civ 1134

- **Factual background:** The Appellant operates the Bell Hotel in Epping, Essex. It is currently used to house applicants to the UK government for asylum. Protests – alleged to include incidents of violence – had occurred. Epping Forest – the Local Planning Authority – sought an injunction to restrain this use on the basis that – Epping Forest argues – it amounts to a material change of use for which no planning permission has been granted. The matter is listed for trial in October 2025 in the High Court. Eyre J granted an interim injunction pending trial on 19 August 2025. The Appellant appealed, as did the SSHD, whom Eyre J had refused permission to intervene.

- **The issue:** Had the Judge erred in granting the interim injunction and refusing the SSHD permission to intervene?

Somani Hotels Ltd v Epping Forest DC [2025] EWCA Civ 1134

- **Decision:** the interim injunction was set aside, and the SSHD was granted permission to intervene. The Court found:
  - The Judge's approach in the balance of convenience exercise (pursuant to *American Cyanamid*) had been seriously flawed in principle. The Epping residents' fear of crime was properly taken into account by the Judge. This was clearly relevant, but, in the Court of Appeal's view, it was also clearly outweighed in the balancing exercise by the undesirability of incentivising protests, by the desirability in the interests of justice of preserving the status quo for the relatively brief period leading up to the forthcoming trial, and by the range of other public interest factors discussed in the judgment.
  - The Judge erred in refusing the SSHD intervener status. This was in both his evaluation of the "gateway" in CPR 19.2, and in the exercise of discretion thereafter.

Ministry of Defence v Global Media and Entertainment Ltd [2025] EWHC 1806 (Admin) (the Afghan Resettlement Scheme Data Breach)

- **Factual Background**: In early 2022, a person working for the Ministry of Defence accidentally released a dataset containing details about people who had applied under the Afghan Relocations and Assistance Policy (and a similar scheme) for relocation to the UK. Applications were premised on the work that these individuals had done with or for the UK prior to the Taliban coup in 2021, and the consequent danger to these individuals (following the coup) due to the work they had undertaken. In August 2023, the MOD learned that part of the dataset had been published on a Facebook page. The MOD applied for an injunction shortly thereafter. The Court – Robin Knowles J – granted a "superinjunction", and Chamberlain J continued that injunction. It prevented both further disclosure of the dataset, and disclosure that the injunction **existed**.

- **The Issue:** After multiple continuations (one following an appeal) of the injunction in 2023 and 2024, it was again for the Court to determine whether continuation or discharge was appropriate.

Ministry of Defence v Global Media and Entertainment Ltd [2025] EWHC 1806 (Admin) (the Afghan Resettlement Scheme Data Breach)

- **Decision**: The superinjunction was discharged. The Court received evidence from the MOD (see para 25 of Judgment), following a review, that:
  - The acquisition of the dataset by the Taliban was "unlikely to substantially change an individual's existing exposure given the volume of data already available".
  - It "appear[ed] unlikely that merely being on the dataset would be grounds for targeting."
  - It was "therefore also unlikely that family members – immediate or more distant – will be targeted simply because the "Principal" appears in the… dataset".
- These conclusions "fundamentally undermine[d]" the evidence basis on the which the High Court and Court of Appeal had relied in deciding that the injunction should be continued (see para 26 of Judgment).

Abbasi and another v Newcastle upon Tyne Hospitals NHS Foundation Trust [2025] UKSC 15

- **Factual background:** This case was concerned with situations where injunctions were granted in connection with proceedings initiated to determine whether it is in a child's best interests that life-sustaining treatment should be withdrawn. The purpose of the injunctions was to prevent the identification of persons and institutions involved in the treatment and care of the child in question.

- **The issue:** When an injunction could be lifted once the proceedings had ended.

Abbasi: What did the UKSC decide?

01 Jurisdiction

- *Parens patriae*
- *Broadmoor* jurisdiction
- Injunctions to protect the rights of the clinicians themselves (tort or ECHR).

02 Scope

- *Contra mundum*
- Not just against those likely to cause harm
- Hearings in private
- Wider than normal reporting restrictions

03 Open justice

- Such injunctions are compatible with open justice

04 Balance

- Limited duration – end of the proceedings with a cool-off period
- Balance privacy with the freedom of expression
- Extended protection must be justified

For Women Scotland Ltd v The Scottish Ministers [2025] UKSC 16

The issue: The meaning of “man”, “woman”, and “sex” for the purposes of the EA 2010.

Decision: The terms “man”, “woman” and “sex” in the EA 2010 refer to biological sex, not certificated sex under the Gender Recognition Act 2004.

Reasons:

1. Meaning of the terms in the Sex Discrimination Act 1975.
2. Binary definition of the terms “man” and “woman” in s.212, EA 2010.
3. Interaction with other provisions of the EA 2010.
4. Creation of two sub-groups within those who share the protected characteristic of gender reassignment.
5. Additional provisions that require a biological interpretation of “sex” in order to function coherently, including separate spaces and single sex services.
6. This interpretation did not remove protection for trans people, with or without a GRC.

For Women Scotland: The Fallout

01

Coverage

Source: Law Society of Scotland

02

Guidance

Good Law Project challenge to the EHRC interim guidance (now partially amended).

03

Further cases

Good Law Project challenge in Northern Ireland – whether the judgment breaches the Withdrawal Agreement.

For Women Scotland bringing proceedings in Scotland to quash other policies.

R. (on the application of Possible (The 10:10 Foundation)) v Secretary of State for Transport [2025] EWHC 1101 (Admin)

- **Issue:** Challenge to the decision to publish the JZS, which set out the Government's strategy for decarbonising the UK aviation sector by 2050, and the SST's 2023 Review decision that the JZS remained the appropriate strategy to pursue aviation decarbonisation.

- **Grounds:** A number of grounds run between the two Claimants. Focus on one ground related to consultation, namely: was the consultation unlawful because the SST had not included direct demand management options within the consultation?

Jet Zero Strategy: What did the court decide?

Case law: “The case law on when discarded options must be included in a consultation, or at least referred to in the consultation documents, pulls in different directions, reflecting the fact that fairness in this context is highly fact-sensitive.” (§129)

On the facts:

“[T]he JZS consultation was not a consultation on aviation decarbonisation generally; it was a consultation on how to achieve net zero aviation by 2050 consistently with the objective of not directly restricting aviation demand.4 In choosing to consult on a strategy to achieve a specified objective, fairness did not require that the Defendant also consult upon a different strategy to achieve a different objective.” (§130)

Outstanding application for PTA to the CA.

R (National Council for Civil Liberties) v SSHD [2025] EWCA Civ 571

- **Issue:** Whether it was lawful for the Public Order Act 1986 (Serious Disruption to the Life of the Community) Regulations 2023 to define “serious disruption” in the Public Order Act 1986 as “more than minor”

- **Outcome:** The Regulations were ultra vires as “serious disruption” could not mean “more than minor”.

- **Consultation:** Government engagement with policing bodies about the Regulations amounted to intra-governmental engagement – it did not constitute a formal consultation.

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Thank you

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