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ROLLING JUDICIAL REVIEW

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WHAT IS “ ROLLING “ JUDICIAL REVIEW? **11KBW**

- Rolling Judicial Review is an approach to JR where a FRESH DECISION which has arisen AFTER the original challenge is sought to be ADDED to that challenge by way of an amendment of it
- The “ trend” has been “ deprecated” by the Court of Appeal
 - R (Spahiu) v SSHD (2018) EWCA Civ 2064, (2019) 1 WLR 1297, at paras 60-63
 - R (Dolan) v SoS for Health (2020) EWCA Civ1605, at paragraph 118

THE COURT'S APPROACH

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- There is no hard and fast rule
- BUT it will USUALLY be better if JR proceedings are NOT treated as “rolling” or “evolving”
- Dolan was precisely the kind of case in which a rolling JR should not be brought
- Not appropriate where issues turn on the state of the evidence at a particular time

THE APPROACH DEVELOPED

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- Rolling JR has been considered by Fordham J in R (Ali Raja) v Redbridge LBC (2020) EWHC 1456 (Admin), at paras 18-21 inc
- Rolling JR -
- Can, in some cases, such as Ali Raja, be “ entirely appropriate”
- IF approached with “ care and discipline”
- Discipline may include “ focus” on a specific decision

THE DYNAMIC REALITY

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- A claimant may however seek something other than or more than a quashing order
- A claimant may impugn inaction or a failure or refusal
- A claimant may seek a mandatory remedy
- The conduct under challenge, and the alleged default, may be of a CONTINUING nature
- The touchstones are-
 - Flexibility
 - Fairness to all the parties
 - Securing, and not undermining, the interests of justice
- Cases are infinitely different

DECISION-MAKING PROCES

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- Sometimes a defendant public authority is functus once it has made a decision and lacks jurisdiction to reconsider
- But more usually the authority has ONGOING FUNCTIONS and is able to react, review and reconsider
- “ It is important that they should”
- Open-mindedness is a virtue, not least with respect to representations
- Circumstances can change/proceedings should be avoided
- If a new decision is made adverse to the claimant, it may be appropriate for the original grounds to be amended to challenge it

EVOLVING JUDICIAL REVIEW

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- Rolling JR is concerned with –
 - amendment of proceedings to add challenge to later decision, and
 - the breadth of the evidence admissible on the issue of whether the defendant has made an unlawful decision
- If a decision is found to have been unlawful and the question arises of remedy/relief, the that will be influenced by what has happened since the decision
- For example, in R (Latif) v SoS for Justice (2021) EWHC 892 (Admin) at paras 47 & 60/61, representations having been taken into account since the initial flawed decision, in a way and to an extent that overtook the error in that decision, in order to address what had gone wrong :-
 - It was not necessary to quash the decision, and
 - A declaration would be sufficient.

PREMATURITY

- R (3 Million Ltd ' v SSHD (2021) EWHC 1159 (Admin)
- Challenge to adoption of policy : rejected as premature
- Policy not yet in operation, albeit date set : policy not in final,form; impact could not be known; continuing process of decision-making and potential modification
- All claims premature : PSED, indirect discrimination, irrationality, proportionality

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