



R (Campbell) v HM Attorney General

Press Summary: For release at 10am, 1 July 2025

This summary is provided by the court for the assistance of those reporting the judgment, which was handed down this morning (neutral citation [2025] EWHC 1653 (Admin)). It does not form part of that judgment.

- 1 The Divisional Court (Lord Justice Stuart-Smith and Mr Justice Chamberlain) today handed down a judgment on a preliminary issue arising in judicial review proceedings brought against the Attorney General.
- 2 The court concluded that decisions of the Attorney General under s. 13(1)(b) of the Coroners Act 1988 (“the 1988 Act”) to refuse his authority (or fiat) for an application to the High Court to quash a finding made at an inquest and order a fresh investigation cannot be challenged in judicial review proceedings.

Background

- 3 Geoffrey Campbell was unlawfully killed in the North Tower of the World Trade Centre in New York City on 11 September 2001. On 29 January 2013, HM Senior Coroner for West London held an inquest. She completed the inquisition form, recording the time, place and circumstances of the death as follows:

“At 8.46am on 11 September 2001 the deceased was on the 106th floor of the North Tower of the World Trade Centre when an aircraft (AA11) was deliberately flown into the building, causing its collapse at 10.28am. This event was part of a coordinated attack by the Islamist militant group Al-Qaeda.”
- 4 The claimant is Mr Campbell’s brother. He does not accept that the building collapsed because of the impact of the aircraft. His alternative hypothesis is that the collapse was caused by the detonation of pre-planted explosives or incendiaries. He relies on fresh evidence not available to the Senior Coroner.
- 5 On 26 August 2021, the claimant, together with his family and his late brother’s fiancée, applied to the Attorney General for authority to apply to the High Court under s. 13(1)(b) of the 1988 Act for an order quashing the inquisition and directing an investigation. The application was supported by a large volume of documentary evidence. The application was considered by the Solicitor General, who refused it. The Solicitor General later agreed to reconsider but, on 4 January 2024, again refused consent.

- 6 The Solicitor General considered that the cause of the collapse of the buildings had already been adequately investigated in the United States. The clear consensus view was that there was no realistic possibility of any cause other than the impact of the aircraft. The claimant's hypothesis was "fanciful" and "simply not credible". Reference was also made to the "long-standing principle outlined in *Gouriet v Union of Post Office Workers* [1978] AC 435 that the exercise of the Law Officers' discretion in public interest functions is absolute, and non-reviewable".
- 7 The claimant advanced five grounds of challenge: first, that the Solicitor General erred in law as to the test to be applied to the question whether a new investigation was in the interests of justice; secondly, that the decision was irrational in light of the fresh evidence; thirdly, that there was a failure to give adequate reasons; fourthly, that the finding of a "clear consensus view" about what happened on 11 September 2001 was unreasonable; and fifthly, that it was unreasonable to categorise the claimant's hypothesis as "fanciful".
- 8 The court noted that, given the size of the bundle, substantial judicial resources would be involved in considering whether any of the grounds was arguable. The justiciability point was likely to be of relevance in other cases. In those circumstances, it ordered that, prior to the determination of permission to apply for judicial review, there was to be a hearing of a preliminary issue as to whether the challenged decision was justiciable.

Conclusions

- 9 The court concluded as follows:
 - (a) The decision of the House of Lords in *Council of Civil Service Unions v Minister for the Civil Service* [1985] 1 AC 374 established that the justiciability of a decision taken in the exercise of a public power depends on the nature and subject matter of the power, rather than its source. Thus, decisions taken in the exercise of prerogative powers cannot be said, for that reason alone, to be non-justiciable.
 - (b) Since *CCSU*, the courts have continued to regard certain subject matters as inappropriate for judicial determination for institutional and constitutional reasons, but they have tended to give effect to these conclusions by limiting or modifying the grounds on which the decision can be challenged or by according a broad margin of discretion or ascribing particular weight to the view of the decision-maker, rather than by categorising the decision as non-justiciable simpliciter.
 - (c) Against this background, the identification of a category of decisions as immune from review on any ground may appear anomalous.
 - (d) Nonetheless, *ex p. Newton* (1855) 24 LJQB 247 and *R v Comptroller General of Patents, Designs and Trade Marks* (1899) 1 QB 90 show that, by the end of the nineteenth century, there was a class of discretionary functions of the Attorney General whose exercise was categorically immune from review.
 - (e) It was part of the ratio of the Court of Appeal's decision in *Gouriet v Union of Post Office Workers* [1977] QB 729 that the function of granting or refusing authority to bring a relator action fell within the class of decisions that were immune from review. The speeches in the House of Lords also show that the immunity was not understood as limited to relator actions, but as applying to a wider class of public interest functions mentioned in the nineteenth century cases: [1978] AC 435.

- (f) If there were any doubt that the rule of immunity applies beyond relator actions, it is removed by the judgments of the Court of Appeal in *R v HM Attorney General ex p. Edey*, unreported, 26 February 1992 and the Divisional Court in *R v Solicitor General ex p. Taylor* (1996) 8 Admin LR 206.
 - (g) Accordingly, Popplewell J was correct to say, in *R v Attorney General ex p. Ferrante* (unreported, 1 July 1994), that “if the principle in *Gouriet* is now to be treated as no longer good law in relation to the Attorney Generals’ powers it must be for a higher court than me so to say so”.
 - (h) A review of the authorities from *ex p. Newton* to *ex p. Taylor* shows that the category of functions whose exercise is non-justiciable includes powers to enforce the law by bringing criminal or civil proceedings in the public interest and powers to authorise or terminate such proceedings by others—i.e. powers which make the Attorney General a gatekeeper to the court.
 - (i) Whatever might be said about the precise boundary of the non-justiciable category, the function of consenting to proceedings under s. 13(1) of the 1988 Act falls squarely within it.
- 10 The court also concluded that, if, contrary to its view, decisions of the Attorney General to refuse consent under s. 13(1) of the 1988 Act were justiciable at all, the grounds on which they are subject to review are limited to “dishonesty or mala fides or an exceptional circumstance”: see *R v Director of Public Prosecutions ex p. Kebilene* [2000] 2 AC 326 and *R (Corner House Research) v Director of the Serious Fraud Office* [2008] UKHL 60, [2009] 1 AC 756. The present claim does not involve any such ground of challenge.

Decision

- 11 Thus, on current authority, the court concluded that the challenged decision is not justiciable. In any event, it is not open to challenge on any of the pleaded grounds. The court accordingly refused permission to apply for judicial review.

Ends