

Legitimate expectation

References:

- Grey & Grey; Elements of Land Law (4th Edn)- “ELL”
- Megarry & Wade; The Law of Real Property (Sweet and Maxwell, 7th edn) – “M&W”
- Otherwise taken from Land Law lecture notes (GDL)/ FTB Moot Submissions.

There are two parties:

- The public body – here the Claimant (“LL”)
- The licensee – here the Defendant (“C”)

A legitimate expectation can arise where an applicant has relied on a promise or regular course of conduct by a public authority and expressed or carried out in such a way to show that it was intended to be binding. Examples:

- Departure from an Express Assurance: AG of Hong Kong v Ng Yuen Shiu [1983] 2 AC 629;
- Departure from a previous course of conduct: Council for the Civil Services Unions v Minister for the Civil Service [1984] 3 All ER 935.

The public law analogue of proprietary estoppel is the ‘legitimate expectation, the denial of which may amount to an abuse of power’ (R v North and East Devon Health Authority ex p Coughlan [2001] QB 231; Challis v Destination Malborough Trust Board Inc [2003] 2 NZLR 107). The issue can be raised by where there was a representation/ regular practice/ course of dealing between LL and C (Rowland v Environment Agency [2003] Ch 581).

A legitimate expectation to realty may constitute a ‘possession’ which in the meaning of Protocol 1 Article 1 ECHR, such as an option to renew a lease (Stretch v UK (2004) 38 EHRR 196). But a person’s misconduct may deprive the applicant (here C) of his/ her legitimate expectation (Cinnamit v British Airports Authority [1980] 1 WLR 582).

Ground: Unfair Procedure/ Procedural Impropriety.

The ground for challenging the decision would be a public law ground of procedural impropriety based on the principles of fairness and natural justice. There is a right to a fair hearing; also see- Ridge v Baldwin [1964] AC 40 regarding the right to a fair hearing.

Fairness required depends on (Lloyd v McMahon [1987] AC 625):

- [1] The character of the decision-making body;
- [2] The kind of decision it has to make;
- [3] The statutory or other framework within which it operates.

The question of the nature of the decision is explored in McInnes v Onslow-Fane [1978] 1 WLR 1520. Megarry VC set out 3 types of interest and how they should be determined:

- Forfeiture cases – the right to an unbiased tribunal, notice of the charges and the right to be heard in answer to the charges.
- Expectation cases – More akin to forfeiture cases, the legitimate expectation of a renewal of the licence or membership is one which raises the question of what it is that has happened to make the applicant unsuitable for the licence or membership, for which he was previously thought suitable.

The common law duty of procedural fairness arises because the Claimant created a legitimate expectation that the Defendant would be consulted by previous practice and a promise.

- In R (Moseley) v Haringey London Borough Council [2014] UKSC 56, Lord Reed JSC, at [35], outlined when a duty of procedural fairness arises, one of which was when a legitimate expectation is created 'some promise or practice of consultation'.
- The court has a jurisdiction to whether a decision was procedurally fair in cases where some procedural benefit has been promised and breached, as per Lord Woolf, at [58] and [62], in R v North and East Devon HA, Ex p Coughlan [2001] QB.
- This promise is more binding if made to a specific group, rather than to the public at large, as per Lord Woolf, at [71], in Coughlan.

The common law duty of procedural fairness arose because the Defendant has an interest in the subject Land, by way of an annual contractual licence to conduct activities on the Land in relation to education, training and community events. The Claimant should have applied the principles of natural justice when ending that licence.

- Applicability of procedural protection under the common law s arises where there is a legitimate expectation 'arising from an interest which is held to be sufficient to found such an expectation' (Mosley [2014], Lord Reed JSC at [35]).
- The demands of fairness will be higher where an authority contemplates depriving someone of an existing benefit, as per R v Devon County Council Ex p Baker [1995] 1 ALL ER 73, Simon Brown LJ. [Moseley]
- Where a person has an interest, falling short of a substantive right, from which they derive a benefit or advantage, procedural fairness requires that any withdrawal or denial of that interest requires the withdrawer to ensure the interest-holder is given an opportunity to comment, as per Lord Woolf LJ, at [75], in Coughlan.

*****ENDS*****