

Administrative law, judicial review, statutory interpretation, bus franchising scheme (R (on the application of Rotala plc) v Greater Manchester Combined Authority)

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Local Government analysis: The Court of Appeal upheld the Administrative Court's previous decision that the Mayor for Greater Manchester Combined Authority (GMCA) did not have to revisit the information audit in the statutory process for deciding a new local bus franchising scheme. Notwithstanding a change in circumstances due to the intervening pandemic. The legislation could not be construed to require this. Therefore, GMCA did not fail to have regard to a material relevant consideration (ie a new assessment after the pandemic) under Wednesbury principles. As a result, GMCA's decision to adopt the franchising scheme without repeating the assessment was neither unlawful nor irrational. It could not be construed to be the intention of Parliament when the legislation was enacted that unforeseen circumstances arising after the statutory audit of the authority's assessment and public consultation could require a step in the statutory process to be repeated. Written by Helen Randall, consultant, Trowers & Hamlins LLP.

R (on the application of Rotala plc) v Greater Manchester Combined Authority and another [\[2022\] EWCA Civ 1048](#)

What are the practical implications of this case?

The significance of this case for public lawyers is that the Court of Appeal has confirmed that if unambiguous legislation provides for a certain procedure, each stage of which has been correctly followed by a public authority before making a decision, even a material change in circumstances (such as the pandemic) does not render unlawful the authority's decision at the conclusion of the process.

Furthermore, if the authority has followed every step of the process correctly, its decision not to repeat a step in the process (in this case audit of the assessment as to whether the authority could afford to make and operate the new bus franchising scheme and whether it represents value for money) cannot be regarded as irrational.

This judgment perhaps seems counterintuitive given the significant impact of the pandemic on the economy and hence public transport needs. Many public lawyers would have instinctively advised this authority to 'err on the side of caution' and repeat the audit in light of a major circumstance such as the pandemic.

However, the court considered that the legislation had envisaged the assessment, audit and public consultation steps in the process might give rise to a wide variety of factors and if Parliament had intended authorities to revisit steps in the process as a result of emerging facts then the legislation would have provided for it.

This has relevance not only to bus franchising schemes but potentially to all public authorities who have to follow procedures laid down under legislation. Compiling assessments, procuring audits of assessments and conducting public consultation exercises tend to be costly and time consuming so authorities will prefer to avoid having to repeat such steps if at all possible.

What was the background?

GMCA was the first local authority outside London to use its powers to embark on making a new bus franchising scheme and it started the process in June 2017.

The statutory process under the [Transport Act 2000 \(TaA 2000\)](#) (amended by the [Bus Services Act 2017 \(BSA 2017\)](#)) includes several steps: an assessment as to whether the proposed franchising scheme will be affordable and value for money for the authority to make and operate; an independent audit as to whether the quality of the information on which the assessment is based and its analysis are good enough; consideration by the authority of the audit; then publication and public consultation of the scheme proposal, the assessment and the audit. These were all completed by the end of 2019, ie before the coronavirus (COVID-19) pandemic. GMCA produced a coronavirus impact report in November 2020 which the auditors reviewed on a non-statutory basis. The decision to adopt the new bus franchising scheme was made in March 2021 and was judicially reviewed on the separate applications of Stagecoach and Rotala.

The Administrative Court at first instance dismissed both applications and Rotala appealed. Stagecoach was an interested party.

Rotala argued that it was implicit in the legislation that a new material circumstance (such as the intervening pandemic) would require the authority to seek a reassessment of the audit and therefore the decision to make the franchise was unlawful. Also, the failure to reassess the audit meant the authority's decision was unlawful.

What did the court decide?

The Court of Appeal focused on the precise interpretation of the express provisions in the legislation ([TaA 2000, s 123](#) as amended by the [BSA 2017](#)) which sets out the process an authority has to follow before it makes a decision on whether to adopt a bus franchising scheme.

The Court decided that the statute makes no provision for a fresh assessment, revisitation of the assessment in the light of further information. Hence the authority was not obliged to revisit the audit.

The specific timing for the audit laid down in the statute indicates that the function of the audit is not to pass judgment of the outcomes of the assessment but merely to consider the process that has been followed, the accuracy and robustness of the information that has been used in the analysis and to satisfy the auditor that the mechanics of the process have been carried out correctly.

Inco Europe and others v First Choice Distribution and others [\[2000\] 1WLR 586](#) (the leading authority on when one may read words into a statute to give effect to Parliament's intention in cases of clear drafting error), was considered not to apply because there was no drafting error in this legislation.

The purposes of the audit to provide consultees with independent quality assurance of the information in the authority's assessment and to draw the authority's attention to problems with the information or its methodology were fulfilled when the audit was circulated with the consultation documents and received by the authority. Parliament did not intend the audit to be revisited in the light of any subsequent responses or events.

With regard to the second appeal ground based on Wednesbury irrationality, the Court held that original audit was not concerned with the reliability of the conclusions, but only with the robustness and reliability of the means by which they were reached. The two exercises were completely different. The course which the authority took could not therefore be castigated as one which no reasonable authority in their position would be entitled to take.

Case details:

- Court: Court of Appeal, Civil Division
- Judges: Lord Justice Andrews, Lord Justice Davis and Lord Justice Snowden
- Date of judgment: 25 July 2022 Judgment Approved by the court for handing down

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