

Substantive Legitimate Expectations: The Journey So Far

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ABSTRACT

The doctrine of substantive legitimate expectation is rooted in administrative law. Initiated in United Kingdom, it is originally intended to provide relief for claimants who suffered public wrong, but who may not have any legal claim procedurally or substantively under the main administrative or public law principles. Basically, by the principles in promissory estoppel, a public authority will not be allowed to rescind its promise if a suspecting member of society relies on such a promise to alter his position. This paper analyses the genesis of legitimate expectation in its both substantive and procedural forms in view of a number of cases decided by English courts.

Keywords: administrative law, expectations, public authority, public body, rule of law.

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I. INTRODUCTION

Since the decision of Lord Denning in *Schmidt v. Secretary of State for Home Affairs* (1969) which was said to have introduced into English law the doctrine of legitimate expectation, it has been the subject of intense discussion (De Smith *et al.*, 1999). This paper is going to critically examine the development of substantive legitimate expectation from its inception to its controversial status under English law. It is to be noted that, a good argument for or against the doctrine of legitimate expectations can be successful only upon reasonable analyses of the following instances (Craig, 2003):

a) Instances in which out of past practice, a public body has been treating a claimant in a particular way to the extent that he legitimately expected to be continuously treated that way, may the public body be permitted to change this practice thereby frustrating his legitimate expectations?

b) Instances where a public authority sets out certain procedure or conditions to be followed before a claimant is conferred with a benefit or an advantage or is treated in a certain way, could that public authority refuse to confer that benefit or treat the claimant in that particular way although he has fulfilled these stipulated conditions?

c) Where a public body makes a promise or representation to a claimant that he would be conferred with some benefit or advantage can his expectations be protected when the public body seeks to rescind its promise?

d) Where a public body makes a general policy statement to the entire society, can they be protected when the public body decides to subsequently change that policy although they relied on it?

e) Where a public body has a regular way of doing something or treating people, could the public body be allowed to treat a claimant in some other way although he legitimately expected that he would be treated in the regular way other people are being treated?

Answers to these questions will be fairly treated in this paper in relation to the development of substantive legitimate expectations. This may be necessary because, out of the intense debate on critical examination of development of substantive legitimate expectation, the question has not been whether or not the court could intervene but what would be the consequences as well as the extent of the court's intervention. Is it for the court to decide that the public body should hear the claimant before it goes about altering its promise? Is it for the court to decide that the claimant be allowed to advance reasons before the public body why he ought not get his expectation frustrated? Or is it for the court to compel the public body to fulfill its promise so that a claimant who legitimately relied on the representation shouldn't get his expectations disappointed? Are there factors to be given consideration before the court protects claimant's expectations? Because of the so many controversies around this doctrine many common law countries refuse to recognize it majorly alleging that it contradicts their constitutional provisions (Matthew & Greg, 2017).

As will be observed in this paper, some of the controversies that may appear to be still uncertain after the recognition of substantive legitimate expectations, are among other things, the intensity of review and the test to be applied by the court in weighting and balancing between individual interest and the public interest; as well as factors to be considered before the court decides that a claimant is entitled to legitimate

expectation of a substantive benefit (Craig & Schonberg, 2000). The tension between legitimate expectation under public law and doctrine of estoppel under the realm of private law and the controversy between principles of legal certainty and doctrine of legality may also be worth mentioning. Thus, there may be a situation where a decision-maker may find himself in dilemma that if he refuses to fulfill his promise he may be blamed of frustrating legitimate expectation of the claimant and on the other hand, if he goes on to fulfill his promise, he may be accused of fettering his discretion which may not be in the interest of general public.

Review of some cases relating to both legitimate expectations “proper,” and of substantive legitimate expectations reveal that, generally speaking not all expectations would prompt protection by court and this point is incontrovertible. With the decision of Court of Appeal in *R v. North and East Devon Health Authority, ex p. Coughlan* (2001) QB 213 which may be discussed in due course, it has been clear that depending on the circumstances in each case, the court normally considers among other things, the nature of the representation; the reasons advanced in order to justify altering of the decision; the status of life of the claimant.

Two things may be pointed out at this juncture. The first is that, unlike substantive legitimate expectations, English courts (as well as legal writers) seemed not have been much bothered about the basis of accepting procedural legitimate expectations as part of English public law. This might have been attributed to the fact that the justification of procedural legitimate expectations is one of the fundamental principles of law wholly recognized by English law i.e., the requirement of fairness. Professor Craig tells us that English courts have had little difficulty in recognizing the existence of procedural legitimate expectation they have, however, shown considerably more reluctance to accept substantive legitimate expectations as part of the law (Craig, 1996).

By procedural legitimate expectations it means an expectation of hearing or consultation, which an applicant claims to have based on some fairness or natural justice before the public body seeks to change its mind. In line of this, this paper will attempt to bring out and analyze some of the reasons advanced for and against recognition of substantive legitimate expectations. The other thing is that although English courts have been reluctant to recognize substantive legitimate expectations, this has not been the position in community law in which the concept was given recognition and made part of the law. Citizens subject to community law get their expectations protected by the community law without differentiating between cases of substantive or procedural expectations. However, an argument may be maintained that there have been traces of indirect recognition of substantive legitimate expectations in English public law from earlier decisions of administrative courts. This is going to be substantiated in the next part of this discussion.

II. THE RECOGNITION OF SUBSTANTIVE LEGITIMATE EXPECTATIONS IN ENGLISH LAW

The first thing to bear in mind is that there is no dispute on whether or not legitimate expectations generally are protected by English law, despite various reasons being given to justify it. If a public body makes an undertaking, a promise or representation to an individual or group of people that it would do something or would take a particular course of action there will be an expectation that the promise will be fulfilled. English law affords protection to the claimant(s) who rely on the promise upon some considerations. A claimant could even make a strong case if the promise made by the public body is clear and unambiguous (Bailey, 2000) or that it is of such character that ordinarily it could reasonably be relied on. A claimant who legitimately relies on some past practice of a public authority may also get his expectations protected by English law depending on the circumstance which gives rise to the practice. In the interest of good public administration, the need to ensure public trust and confidence and in order to avoid maladministration in public affairs decision-makers should be bound by their promises-except if the carrying out of the promise or representation would interfere with their statutory duties (De Smith *et al.*, 1995). Fairness in good administration and the moral binding nature of promises require that a public body should not ordinarily go back from its promise. The court may intervene where a public authority decides to go back on its promise.

The first attempt to introduce legitimate expectations into English was by Lord Denning in the case of *Schmidt v. Secretary of State for Home Affairs* (1996) where Lord Denning said that an alien who was given permission to enter and stay in the United Kingdom for some limited time had legitimate expectation of being allowed to stay for the permitted time and if the permission was revoked before the end of the time to stay, then the alien should be given an opportunity to make representations before the Home Secretary (Love land, 2003). The application of legitimate expectations was also demonstrated in *A.G. of Hong Kong v. Ng Yeun Shiu* (1983) A statement was issued by the government of Hong Kong shedding light in respect of illegal immigrants like the respondent in this case, that they would be treated based on out lined procedures-that they would be interviewed before any action was taken against them and each case would be treated on merit. The statement did not guarantee that the illegal immigrants would not be removed after

the procedure was accordingly followed. The Privy Council maintained that as the undertaking created an expectation in the mind of the respondent that he would be interviewed based on a certain procedure, the government of Hong Kong was bound by its undertakings. The government's order to remove the respondent was consequently quashed. This is an example of procedural expectation where fairness requires that, a person who relies on a representation that he would be heard before a decision is taken in respect of him has his expectation protected by law.

In *R v. Liverpool Corporation, ex p. Liverpool Taxi Fleet Operators' Association* (1972) a representation was made by the Liverpool Corporation (a licensing authority for taxi cabs) to Taxi Fleet Operators' Association that it would not increase the licenses until certain legislation was passed and came into operation. The association sought to challenge the decision of the corporation to go back from its representation. The Court of Appeal held that it would be unfair for the corporation to go back from its representation without hearing the Taxi Fleet Operators. Although this may not be a clear case of legitimate expectation, it may be cited in attempt to show an indirect recognition of legitimate expectation. An expectation of hearing may be fulfilled if the claimant is heard, or if he is allowed to make representation because he ought not get his expectations disappointed, depending on the circumstance in each case.

It may be pointed out that in both cases, i.e., where a promise was made expressly or impliedly, and where, as in *A.G. of Hong Kong v. Ng Yeun Shiu* (1983) a statement was made that a person of a particular group would be heard before a decision is taken, it is not material that the claimant is aware of the promise or the statement or that he has relied on it and suffered a detriment. A past practice may create expectations that the court may protect. If a claimant has been enjoying an advantage or benefit out of a practice in the past to the extent that he legitimately expected the practice to continue, it would be unfair for the public body to renege from the practice without an opportunity is given to the claimant to be heard. This was demonstrated in *R v. Inland Revenue Commissioners ex p. Unilever Plc* (1996) where the Court of Appeal held that it would be unfair, abuse of power and breach of legitimate expectations to allow a public body to suddenly change a past practice (of twenty-five years) of accepting the applicant's tax refund claims after the expiration of statutory limit. It can be understood that a past practice may give rise to legitimate expectations even if it is not followed with representations or promise as in this case. However, as it will be seen later on, not all past practices may give rise to legitimate expectations. It may also be pointed out that the basis of quashing the public body's decision to resile from its promise in these cases is fairness. Fairness in the sense used in cases of legitimate expectations differs from fairness based on natural justice. The latter arises because the claimant has an important interest so that it would not be taken away from or granted to him without a hearing. The former arises because a promise or representation was made to the claimant by public authority (*Le Sueur et al.*, 1999).

Furthermore, it has to be noted that not all representations made by a public body give rise to legitimate expectations. For a representation or decision to create legitimate expectations:

"It must affect (the individual)... by depriving him of some benefit or advantage which either (1) He had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has given an opportunity to comment; or (2) He has received assurance from the decision-maker will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn."

(Lord Diplock in *Council of Civil Service Unions v. Minister for Civil Service*, 1985)

It could therefore be submitted that based on the authorities cited, it is undisputable that legitimate expectations are protected under English law. What is not clear (for now) however, is whether or not legitimate expectations can give rise not only to procedural hearing, but also to a substantive benefit, an expectation of boon (Forsyth, 1988).

Craig pointed out one of the objections being raised against substantive legitimate expectations when he said that the central argument put against a doctrine of substantive legitimate expectations is that the liberty to make policy changes is inherent in government, and therefore that existing policy should not be ossified or unduly fettered (Craig, 2004).

It has been argued that because of the discretionary powers of public bodies, if they are to be bound by their past representations or promises, it would amount to fettering of discretion. It would consequently allow public bodies to extend their power beyond its legal boundaries. This has usually been the traditional argument (Roberts, 2001). It is also argued that if public bodies are made to be bound by their past promises, it would amount to applying estoppel of private law into public law. An interesting and convincing answer to the argument that recognition of substantive legitimate expectations would lead to a fetter of discretion was given by Sedley J. in *R v. Ministry Agriculture, Fisheries and Foods, ex p Hamble (offshore)* (1995). His Lordship observed that, as the protection given to legitimate expectations is based on fairness:

“It is difficult to see why it is any less unfair to frustrate a legitimate expectation that something will or will not be done by decision-maker than it is to frustrate a legitimate expectation that the applicant will be listened to before the decision-maker decides whether to take a particular step. Such a doctrine does not risk fettering a public body in the discharge of public duties because no individual can legitimately expect the discharge of public duties to stand still or be distorted because of that individual’s peculiar position.”

Sedley J. (1995, p. 724)

In addition, the fact that an expectation of substantive benefit for the claimant should be recognized does not make a policy fettered because a choice to change the policy is still left with the decision-maker. It has been pointed that what the applicant “claims (is) of relevance to the time at which the new policy choice takes effect” and the decision-maker could still change his policy (Craig, 2004).

This development presupposes a controversy between principles of legal certainty on one hand and of legality on the other. While the former permits persons who rely on policy made by public body to have a claim when the public body opts to alter its policy the latter prevents a public body to go beyond boundaries of its legal limit. The existence of these two fundamental principles implies that truly there are certain cases, as we shall soon find out, in which consideration may be given to claimant’s substantive legitimate expectations as against public authority’s desire to go back from its promise or representations.

However, it should be pointed out that the fact that a public body decides to go back from its promise or change its policy does not automatically guarantee a claimant an expectation of substantive benefit even though the public body made express promise to the claimant. Although it may be difficult to point an authority where certain conditions are listed, for instance to be proved by a claimant to substantive legitimate expectations, authorities may be found towards that direction. Sales and Steyn (2004) suggested that in cases of legitimate expectations before a public body should be taken as bound by its promise so as to confer a substantive benefit to a claimant, it should be satisfied that:

(a) At the time of giving its assurance about what it would do the decision-maker had specific and precise information relevant to the transaction in question and was in a position to make full and accurate assessment of the implication of the conferral of the benefit in question.

(b) That the individual concerned has suffered significant detriment by acting in reliance on the assurance.

(c) That there is no overriding public interest which would justify the decision-maker departing from the assurance (Sales & Steyn, 2004).

The next task is to see whether or not substantive legitimate expectations had any role to play in the past. Although it may be said that prior to the Court of Appeal’s decision in *ex p Coughlan* (1999) there has been some indirect recognition of substantive legitimate expectations, yet the authorities seemed to be unclear and uncertain. However, an argument could be maintained referring to Lord Denning’s wisdom in *Schmidt v. Secretary of State for Home Affairs* (1996) that a student foreigner who was granted permission to stay in the UK would have legitimate expectations of being allowed to stay for the length of the permitted time. It would appear that although His Lordship did not clearly refer to legitimate expectation as recognized English law doctrine, the words as couched reflected an expectation not of hearing only but beyond that-to a benefit which is an expectation to continue staying in UK (Forsyth, 1988).

Furthermore, in *R v. Secretary of State for Home Department ex p Khan* (1984) the applicant and his wife wished to adopt a child from Pakistan. A circular from the office of Secretary of State for Home Department stated that although the child could not have right of entry into the United Kingdom for the purposes of adoption, the Secretary of State would, if certain conditions were met, exercise his discretion in favor of the child. After the applicant and his wife satisfied the conditions, the Secretary of State refused entrance to the child on different grounds as against their expectation that on fulfilling the said conditions the discretion would be exercised in their favor. An argument could also be maintained that Mr. and Mrs. Khan were not expecting a hearing but a benefit-i.e., permission for the child to enter United Kingdom; anything less than that could be of no value to them in the circumstance. So based on this it may be submitted that the case can be categorized as a case of substantive legitimate expectations. The court held that the Secretary of State should not be allowed to frustrate the applicant’s legitimate expectations that upon fulfillment of the stipulated conditions discretion would be exercised in his favor without hearing him unless if there is an overriding public interest. In *R v. Secretary of State for Home Department ex p Ruddock* (1987) the applicant sought the review of the decision of Secretary of State for Home Department whereby a warrant was issued authorizing interception of her telephone calls. She argued that she legitimately expected that publicly well-known criteria would be followed before the interception. It may be arguable that no expectation of hearing could be justified in this instance before the interception, as it would be of no use. So, it may be pointed out that the case is “clearly a case with no procedural dimension” (Roberts, 2001). In *R v. Ministry of Agriculture, Fisheries and Foods, ex p Hamble (offshore)* (1995) it was held that although the decision-maker is in the position to make the balance between individual expectations and the public interest, the court could intervene to decide whether the reasons given by the decision maker could

justify disappointing the legitimate expectations of the applicant. Sedley J. (1995) stated that one of the administrative court's duties is:

“... to protect the interest of those individuals whose expectation of a different treatment has legitimacy which in fairness out tops the policy choice which threatens to frustrate it.”

Sedley J. (1995, p. 731)

However, the decision in *R v. Secretary of state for Home Department ex p Hargreaves* (1997) cast the existence of substantive legitimate expectation into doubt (Craig, 2004). An assurance was given to the prisoners that if they behaved well and abide by the prison rules and regulations, they would be considered for early release after they served one-third of their total term. When the respondent changed the time upon which the prisoners would be considered for early release from one-third of the term to one-half the action was challenged by judicial review. The Court of Appeal held that as the Secretary of State has discretionary power to change his policy his decision could not be challenged by judicial review, and to hold otherwise would amount to fettering of discretion. Accordingly, it was not for the court to determine the fairness of the Secretary of State's actions, as doing this would amount to looking into the merit of his decision, which is not the purpose of judicial review. The act of weighing and balancing between individual and public interest is for the decision-maker. The court only intervened where it could be shown that the Secretary of State's decision was perverse or *Wednesbury* unreasonable.

It has been pointed out that there could be an alternative reading to this judgement-that the court might be saying that, based on the facts before it no legitimate expectation was created, and even if one could be found, the administrative court would review the decision applying “*Wednesbury* test, as opposed to any more searching principle of judicial review” (Craig, 2004). Furthermore, the decision in *ex p. Hargreaves* (1997) could be optimistically seen from another dimension that, considering the court's judgement, although it would appear unclear, the court was indirectly acknowledging the existence of doctrine of legitimate expectations-at least in principle. This is because:

“...the very fact that court considered whether such an expectation could be sustained at all on the facts of the case is indicative that such a claim is possible in principle. If it were not, then the applicants' claim would have failed in limine.”

(Craig, 1997).

This could be understood to imply that the Court of Appeal's decision in *ex p. Hargreaves* (1997) might not necessarily cast doubt on the development of substantive legitimate expectations. The fact that the Court did find an expectation worthy of protection was because, based on the facts before it the applicants could not establish legitimate expectation not because it does not exist as part of English administrative law. The decision of the Court of Appeal in *R v. North and East Devon Health Authority ex p. Coughlan* (2001) is a welcome development towards settling the controversy over the doctrine of substantive legitimate expectations. This is because the Court of Appeal has taken into consideration three situations of legitimate expectations and pointed out the role which administrative court should play in each of these situations. Ms. Coughlan has been chronically sick and disabled as a result of serious accident in 1971. She was admitted to Newcourt hospital and had been there from 1971 up to 1993 when she and some other patients were moved to Mardon House; because Newcourt hospital lacked suitable facilities to take care of them. She was persuaded to move to Mardon House, and the Health Authority expressly assured her that Mardon House would be her home for life as long as she would wish. This made Ms. Coughlan and some other patients agree to move to Mardon House. When the Health Authority decided in 1998 after some public consultation to close Mardon House and transfer Ms. Coughlan and other patients' care to the local authority the decision was challenged by Ms. Coughlan in an action for judicial review. The Court of Appeal decided among other things whether or not the Health Authority's assurance to Ms. Coughlan and other patients that Mardon House would be their home for life gave rise to substantive legitimate expectations. The Court decided that unless the Health Authority could establish an overriding public interest that justified transferring the applicant's care from Mardon House to local authority, it could not resile from the assurance given to the applicant. The nature of the assurance given to the applicant had the strength of creating a contract between the applicant and the Health Authority. The Court of Appeal clarified administrative court's role in three different situations. The first situation is where the court confines itself to reviewing the decision of a public body on the ground of *Wednesbury* unreasonableness because the applicant fails to establish having legitimate expectation. The court may decide that the public body is required to bear in mind its policy or assurances giving it the weight it thinks right before deciding whether or not to alter its policy. The second situation is where the court could decide that the promise or representation gives rise to procedural legitimate expectation because the representation relates to the procedure the public body will follow before taking a decision. The court might decide that based on fairness the opportunity of hearing

should be given to the applicant unless there is an “overriding reason” to the contrary (Craig, 2004).

The third category relates to a situation where the representation or promise has given rise to expectation of substantive benefit not opportunity of hearing. The court’s role here is to weight the fundamental requirement of fairness against overriding public interest, which may be relied upon by the public body to resile from its promise. Thus, in this instance, the court may be said to be “undertaking a balancing exercise between the public interest and the individual interest” and this is precisely where Ms. Coughlan’s case has fallen (Roberts, 2001). The Court decided that the fact that the Health Authority decided to close Mardon House to save money would not be accepted as overriding public interest justifying frustrating Ms. Coughlan’s legitimate expectations that Mardon House would be her home for life. It is important to note that because an express assurance was given by the health authority and relied upon by the applicant the Court regarded the promise as giving rise to an enforceable contract the breach of which was unfair and amount to abuse of power. In reaching this conclusion the Court took into consideration among other things, the nature of the promise (a written assurance); the status of the applicant and other patients staying in Mardon House, as well as the impact the assurance made on them being severely injured disable patients. Had the Health Authority offered to Ms. Coughlan and other patients another equivalent accommodation the decision could have been different (Craig & Schonberg, 2000) It has been pointed out that cases like *ex p. Coughlan* were likely to be those where the expectation was confined to one person or a few people.

Bearing this view in mind, does the decision in *ex p. Coughlan* suggest that there may not be substantive legitimate expectation where the representation was made in a general policy statement addressed to the entire society or large numbers of people? A policy statement in its nature is not a representation directed at one particular individual or group of specific individuals as in *ex p. Coughlan*. It is generally assumed that policy statements, when made might be changed at any time. To assume that it may not be changed would give rise to fettering of discretion and *ex p. Coughlan* is not an authority towards that direction (Sales P. & Steyn K, 2004). The decision in *ex p. Coughlan* has provided us with answers to most of the problems that in the past made recognition of substantive legitimate expectations controversial, uncertain, and doubtful. It has provided answers to questions raised in cases like *A.G. of Hong Kong v. Ng Yuen Shiu* (1983) where the expectation was not more than an opportunity to be heard. It also solved the problem raised in cases like *ex p. Khan* (1984) and *ex p. Ruddock* (1987) where the expectation has been of a substantive benefit because in the circumstances of the cases procedural expectation would be valueless to the applicants. It can therefore be submitted undoubtedly that cases on substantive legitimate expectation must now be seen in the light of *R v North and east Devon Health Authority ex p. Coughlan*.

III. CONCLUSION

Considering the Court of Appeal’s decision in *ex p. Coughlan* (2001), can it be said that the doctrine of substantive legitimate expectations has now been recognised as an established doctrine in English public law? In *R v. Newham LBC ex p. Bibi* (2001), the applicants having arrived in the United Kingdom were accepted by council as unintentionally homeless having priority need. The council therefore undertook wrongly to provide secure accommodation to the applicants within 18 months. The applicants sought judicial review because they claimed that the council’s undertaking to provide secure accommodation to them within 18 months created in them legitimate expectations that the assurance would be fulfilled in the near future. Allowing the appeal (in part) the Court of Appeal held that although the undertaking created legitimate expectation of a substantive benefit in the applicants the court would consider the lawfulness or other wise of the undertaking. In the circumstances the appropriate remedy was to remit the matter back to the local authority upon a duty imposed on it to take into account the application for housing put forward by the applicants on this basis.

In conclusion, an examination of the development of substantive legitimate expectations from its controversial and uncertain era to the present position when it is recognized as part of English law reveal that, not all promises or representations could create legitimate expectations. The court takes into account the nature of the representation, which may be words or conduct. Accordingly, as some of the cases cited above indicated, the more unambiguous a representation is the more likely it will give rise to a good case of legitimate expectation. Promises made unlawfully do not create legitimate expectations, so also general policy statements directed to the members of public. The court also considers the status of the claimant, the extent of his reliance and the impact that the representation could make on him, as well as the consequences of frustrating the expectation. The court is also ready to uphold the applicant’s claim where a public body seeks to depart from its policy in relation to him only. In cases of this nature administrative courts do not require the applicant to prove that he relied on the policy and suffered a detriment. This is because consistency and equality are at stake. In addition, the court always acknowledges the fact that public bodies are in a better position to consider, weight and balance between individual and public interests when making decisions; they have power to change their policy when they think it is right to do so.

However, the court may intervene to determine whether or not the reasons advanced for the change of the policy or decision are fair, just and do not amount to abuse of power. In order to do this the court does not uphold the applicant's claim to legitimate expectations if the representation was initially ultra vires; to hold otherwise would amount to permitting the decision-maker to unconstitutionally expand the limits of his statutory powers. Although English courts have recognized it, legitimate expectation is not a legal entitlement nor is it an enforceable right. By protecting applicant's legitimate expectations, the courts seek to uphold the principles of legal certainty which are based on the rule of law. Administrative courts also seek to protect applicants against abuse of power by decision-makers and to rescue them from unnecessary hardship consequential to sudden disappointment of their legitimate expectations particularly in cases where compensation will not provide alternative remedy. On the other hand, by doing this administrative courts also seek to protect public bodies' valuable asset which is trust and confidence of the members of public which brings efficiency in administration and prevent maladministration and mismanagement.

It is now well settled that the doctrine of substantive legitimate expectations is part of English law. It is also acknowledged that the Court of Appeal's decision in *ex p Coughlan (YEAR)* has undoubtedly answered some of the questions that have been hindering the development of substantive legitimate expectation. However, further, and clearer guidance may still be needed on some principles pertaining to substantive legitimate expectations. For instance, there seem to be a need of "more precise" guiding principles on the intensity of review and the test to be applied in weighting and balancing between claimant's legitimate expectations and the public interest in seeing that those in authority are given opportunity to apply their discretionary power in handling and solving efficiently the unpredictable societal problems. Further guidance may also be needed on what representation could give rise to a substantive benefit and what could give rise to procedural hearing-when and how.

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