



Natural Justice

"Natural Justice is but fairness writ large and judicially"



What is Natural Justice?

- A set of common law principles that ensure “fair play” when exercising judgment and power over the lives of citizens.

“Justice is intuitively understood to require a procedure which pays due respect to persons whose rights are significantly affected”

- A decision which offends against the principles of natural justice is outside of the jurisdiction of the decision-making authority. Any such decision will be found *ultra vires* (acting or done beyond one's legal power or authority) and is therefore **null and void**.

Where is it Applicable?

- It is to be implied, unless the contrary appears, that Parliament does not authorise by the act the exercise of powers in breach of the principles of natural justice, and that Parliament does by the Act require, in the particular procedures, compliance with those principles.
- The rules of natural justice therefore are considered **implied mandatory requirements** in the exercise of power.
- The justice of common law will supply the omission of the legislature. E.g. where legislation remains silent, natural justice will fill in the gaps.

Who does it apply to?

- It applies to the body of administrative law and encompasses not only decisions by public bodies and local authorities, but any organisation whose decision would impact on the life of an individual.
- This would include trade unions, club membership, employers, head teachers, school governors etc



The Principles of Natural Justice

“Justice should not only be done, but should manifestly and undoubtably be seen to be done”

The rule against bias:

Nemo iudex in re sua
No-one is judge in his own cause

- A judge is disqualified from determining any case in which he may be, or may fairly be suspected to be, biased.
- Bias can arise from a pecuniary (financial) interest or other interest in the outcome of the decision.
- Proof of actual bias is not required, only that the circumstances (such as pecuniary interest) would, in a fair-minded observer, create a reasonable suspicion, real danger or likelihood/possibility of bias.

The rule against predetermination:

- This principle is similar, though distinct from bias.
- A judge may have a predisposition (e.g. based on policy) prior to a hearing but is required to be “open minded”.
- However, predetermining the outcome prior to a hearing is in violation of natural justice.

The rule against prejudice:

- This includes predetermination but also covers areas where the judge has a personal friendship or hostility against the person being judged.
- In some cases this may extend to the cohort, e.g. where other governors reviewing other governors may be seen to have a “built in tendency to support their colleagues”. This last aspect only applies in certain circumstances.

The Right to a fair hearing:

audi alteram partem
listen to the other side

- The judgment of Justice Fortescue is somewhat quaint, but very applicable, and has been the law since 1748:

“The laws of God and man both give the party an opportunity to make his defence, if he has any. I remember to have it observed by a very learned man, upon such an occasion that even God himself did not pass sentence upon Adam before he was called upon to make his defence. 'Adam' (says God) 'where art thou. Hast thou not eaten of the tree whereof I commanded that thou shouldest not eat?' And the same question was put to Eve also.”

- This covers two points, the first is “to be heard” and the second is that the hearing must be “fair” and brings the previous principles into play. They must act in good faith and listen fairly to both sides, for **that is a duty lying upon everyone who decides anything.**

The Right to a fair hearing:

- As mentioned previously, this principle is not confined to legal tribunals, but is “**a rule of universal application**” and applicable to every tribunal or body that has authority to decide upon matters that have civil consequences to individuals.
- They must not condemn an individual without giving them the opportunity to be heard in their own defence and any agreement or practice to the contrary is invalid.
- Further, “an oral hearing is most obviously necessary to achieve a just decision in a case where facts are at issue...[but] there are other cases where an oral hearing may well contribute to a just decision”.

The right to know the opposing case:

- If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him.
- The individual must know what evidence has been given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them.
- The individual must be given sufficient prior notice of the hearing including the evidence.
- The individual must know “what is at stake”, e.g. what the consequences maybe if found against.

Requesting a hearing adjournment:

- A wrongful refusal of an adjournment, when reasonably requested, may amount to refusal of a fair hearing.

Reasons for Decisions:

- Where, in the context of the case, it is unfair not to give reasons for a decision, they must be given.
- This maybe in the context where there is a route to challenge or appeal a ruling; If a decision departs from policy then this also requires a reason; or where the failure to provide a reason **may justify the inference that the decisions was not taken for a good reason.**
- Where a decision maker subsequently provides different or better reasons, this can invalidate their original decision.



Remedies in Law

“As everybody who has anything to do with the law well knows, the path of the law is strewn with examples of open and shut cases which, somehow, were not; of unanswerable charges which, in the event, were completely answered; of inexplicable conduct which was fully explained; of fixed and unalterable determinations that, by discussion, suffered a change.”

Remedies in Law

- Injunction: Preventing the party from acting unlawfully
- Declaration: Pre-emptively stating a decision to be unlawful
- Quashing Order: Nullifying/making void the decision
- Prohibiting Order: Preventing unlawful proceedings
- Mandatory Order: Mandating a fair hearing

Notes:

- As general rule a failure of Natural Justice in a trial body cannot be cured by a sufficiency of natural justice in the appellate body.
- Natural Justice also protects fairness when it comes to legitimate expectations being dashed without a fair hearing. The expectation must be an assurance that is clear, unequivocal and unambiguous.
- The requirements of Natural Justice depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with and so forth.
- They also do not apply where statute specifically states otherwise, e.g. within employment law there is generally no power to restore employment to a dismissed employee.

Justify (UK) Foundation



Justify (UK) Foundation is a registered charity (1188873)

The foundation aims to advance the cause of justice within the UK by defending the rights of individuals, upholding the principle of “Natural Justice” and supporting cases against discrimination.

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