

Principles governing the handling of quasi-judicial decision by Ministers

Some decisions are taken by Ministers in a "quasi-judicial" capacity – where, given the nature of the decision, it is particularly important that the Minister acts independently and is not subject to any improper influence.

All the usual principles of good decision-making will apply in these circumstances but it will be especially important to ensure that the process is, and is seen to be, scrupulously fair and impartial. This includes:

- Complying with any specific statutory requirements governing the taking of the decision, and the procedure to be followed.
- Normally, consulting those who may be affected by the decision (statute may expressly require this). It will be important to ensure that any consultation is conducted in a scrupulously even-handed way.
- Avoiding any bias or *appearance* of bias. Nobody should be able to allege that the decision was a fix because the decision-maker had an improper interest in the decision, or favoured one party over another. This accords with the requirement in the Ministerial Code for Ministers to "ensure that no conflict arises, or appears to arise, between their public duties and their private interests", and to "keep separate their role as a Minister and constituency Member".
- Taking into account all relevant considerations.
- *Not* taking into account irrelevant considerations – for example extraneous party political considerations.

In practical terms these principles mean that:

- Ministers should approach such decisions with an unbiased, properly directed and independent mind. This does not mean that Ministers are not entitled to have or express views about such cases. But they must approach, and be seen to approach, each decision with an open mind.
- A Minister should avoid expressing any views which could be regarded as prejudging a particular decision.
- It will be particularly important to avoid any suggestion that the Minister has been subject to any improper influence, or has given undue weight to the views of any particular interested party.
- Hence any meetings or communications with interested parties should be carefully controlled and properly recorded. This includes communications via any channels, whether through the Minister, officials or special advisers.

- There should be no private or favoured channels of communication with any one party. Nor should private representations be taken into account: if representations are received by whatever means, including letters, telephone and email, it should be made clear that they can only be taken into account as part of the official decision-making process (and, where the relevant procedure requires, disclosed to other interested parties).
- Quasi-judicial decisions are generally for the Minister alone with contacts normally made through official channels. It may however sometimes be appropriate to consult other Ministers or Departments, for example on matters of policy which are relevant to the decision, to enable an informed decision to be made. Clear records should be kept of any such consultation and, again, views received should be taken into account by the Minister, if at all, as part of the official, properly recorded decision-making process.
- Special advisers. Decisions of this sort should not be made by reference to political or presentational considerations. This applies regardless of the source of the advice, and that of special advisers is treated in the same way as advice from an official giving internal advice to Ministers. If a special adviser is approached by an interested party, he/she should refer the matter to the appropriate official. A special adviser so approached must not give the impression that any particular advice will be determinative when decisions are taken.
- Departments should bear in mind that details of *any* potentially relevant contacts are liable to be disclosed in the event of a challenge to the decision. All Departments should have formal written *guidance* for those involved in decision-making processes. Such guidance may be of general application. But departments should also consider issuing specific guidance for certain individual decisions, particularly where such decisions arise infrequently, raise issues of unusual sensitivity or are of such complexity or novelty that general guidance is likely to be insufficient to assist in the proper discharge of the decision-making function in accordance with these general principles. All such guidance should be agreed by the relevant Permanent Secretary and Legal Adviser.