

WHITE PAPER CONFERENCE 2026

RATIONALITY: AN UPDATE

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INTRODUCTION

- Overview of the cases on rationality in the last 12 or so months.
- *R (KP) v. Secretary of State for Foreign, Commonwealth and Development Affairs* [2025] EWHC 370 (Admin)
- Does the claimant need an underlying “*right*” for there to be “*heightened scrutiny*”?
 - *R (BDH) v. London Borough of Lambeth* [2025] EWHC 2568 (Admin)
 - *Spitalfields Historic Building Trust* [2025] UKSC 11
- *R (Howard League) v. Secretary of State for Justice* [2026] EWHC 74 (Admin)
- Where do the cases leave the relationship between proportionality and rationality?
- *A & B v. Secretary of State for Foreign, Commonwealth and Development Affairs* [2026] CSOH 41: when is delay in decision making irrational?

R (KP) V. SSFCDA [2025] EWHC 370 (ADMIN) (1)

- Two aspects to rationality.
- It includes “*the process of reasoning by which a decision is reached*” (“process rationality”) and “*the outcome*” (“outcome rationality”): *KP* at §55.
- **Process rationality:** “*includes the requirement that the decision maker must have regard to all mandatorily relevant considerations and no irrelevant ones, but is not limited to that. In addition, the process of reasoning should contain no logical error or critical gap*”: *KP* at §56.
 - A decision that “*does not add up – in which, in other words, there is an error of reasoning which robs the decision of logic*”: *ex p Balchin* [1998] 1 PLR 1, per Sedley J at §13.
 - “*... does the conclusion follow from the evidence or is there an unexplained evidential gap or leap in reasoning which fails to justify the conclusion?*”: *R (Wells) v. Parole Board* [2019] EWHC 2710 (Admin) per Saini J at §33.

R (KP) V. SSFCDA [2025] EWHC 370 (ADMIN) (2)

- **Outcome rationality:** “concerned with whether – even where the process of reasoning leading to the challenged decision is not materially flawed – the outcome is ‘so unreasonable that no reasonable authority could ever have come to it’” (citing *Associated Wednesbury Picture Houses Ltd v. Wednesbury Corporation* [1948] 1 KB 223, 233-4): KP at §57.
- Or, as Chamberlain J put it in *KP* (at §57), “in simpler and less question-begging terms”:
 - Where a decision is outside the “range of reasonable decisions open to a decision-maker”: *Boddington v. British Transport Police* [1999] 2 AC 143, 175.

R (KP) V. SSFCDA [2025] EWHC 370 (ADMIN) (3)

- Standard of review:
 - There is a single Wednesbury test, but rationality is a “*flexible standard*” or a “*sliding scale of review*” which can be more or less intensive according to the nature and gravity of what is at stake: *KP* at §61.
 - At one end of the scale is “*anxious scrutiny*” or the “*heightened standard of review*”.
- Chamberlain J identified three propositions from the caselaw.
- **First**, “*the court’s approach to assessing the rationality of a decision varies depending on the importance of the interests affected by or... the gravity of its potential consequences*”: *KP* at §76.
 - It is not necessary to identify a “*right*” impacted by the challenged decision.
 - The claimant’s interests “*may be such as to ground a right properly called... but not necessarily*”.
 - “*In many of the situations in which the heightened standard of review applies, the claimant will have no prior right, whether under statute or at common law, to the benefit which the decision denies him*”.

R (KP) V. SSFCDA [2025] EWHC 370 (ADMIN) (4)

- **Second**, “*where it applies the heightened standard of review has implications for the way the court evaluates complaints of both process and outcome irrationality*”: *KP* at §77.
- **Process irrationality:**
 - The court will subject the decision to “*more rigorous examination, to ensure that it is in no way flawed*”: citing *Bugdaycay* [1987] AC 514, 531.
 - The court will expect the decision maker “*to show by their reasoning that every factor which may tell in favour of an applicant has been properly taken into account*”: citing *YH (Iraq)* [2010] EWCA Civ 116 at §24.
- **Outcome irrationality:**
 - More will be required by way of justification: citing *ex p. Smith* [1996] QB 517 at 554.
 - The importance of the interests affected may, in principle, narrow the range of decisions open to the decision-maker, potentially to just one: *Pham* [2015] UKSC 19 at §107.

R (KP) V. SSFCDA [2025] EWHC 370 (ADMIN) (5)

- **Third**, *“the importance of the claimant’s interests is not the only factor relevant to the court’s approach to a complaint of outcome irrationality. The nature and importance of the public interests on the other side of the balance may also be important”*: KP at §78.
- In particular, the following may also need to be weighed in the balance:
 - Institutional considerations.
 - Constitutional considerations.
- *“In such cases, even where a decision will have grave consequences for the individual, the court may have to afford the decision-maker a wide margin when considering whether the outcome is irrational”*: citing *Hoareau* [2020] EWCA Civ 1010.

R (HOWARD LEAGUE) V. SECRETARY OF STATE FOR JUSTICE [2026] EWHC 74 (ADMIN)

- Calver J agreed with Chamberlain J in *KP* that it was not necessary to identify a “*right*” impacted by the challenged decision: §87.
- SSJ argued that the decision concerned the management of risk and safeguarding in YOIs, which requires the weighing by the SoS of difficult and competing considerations.
- Calver J held that these are matters which have a bearing upon the rationality of the *outcome* of the decision: “*if the final decision is finely balanced then it may be appropriate to give a margin of discretion or latitude to the [SoS]*”: §90.
- “*But in a process rationality challenge... such as the one in the present case, which has potentially serious physical and physiological repercussions for young people held in custody, I consider that the process must be rigorously examined by the court... the [SoS] is required ‘to show by [her] reasoning that every factor which might tell in favour of an applicant has been properly taken into account’*”, citing *KP* at §77, which in turn cited *YH (Iraq)* at §24.

DOES THERE HAVE TO BE AN ESTABLISHED “RIGHT” FOR HEIGHTENED SCRUTINY TO APPLY?

- *R (BDH) v. London Borough of Lambeth* [2025] EWHC 2568 (Admin):
 - Decided after *KP*.
 - Anxious scrutiny is “usually involved when interference with rights—typically legally protected human rights—is alleged... Many administrative decisions have significant implications for individuals, but I should be suspicious of too promiscuous an invocation of the concept of anxious scrutiny...”: per HHJ Keyser KC sitting as a Deputy Judge of the High Court at §40.
- *Spitalfields Historic Building Trust* [2025] UKSC 11:
 - Concerned the lawfulness of standing orders that restricted the right of councillors to vote at planning meetings (they had to have attended any previous meeting).
 - The right of a councillor to vote was an “entitlement” (rather than a right).
 - Lord Sales noted that “heightened scrutiny” had long been applied in the context of human rights (at §§53-54).
 - Further: “[i]n certain contexts other values may be recognised in law as being of similar significance and weight so as to lead to a similar approach to the application of the rationality rule and a corresponding narrowing of the lawful parameters of the relevant discretionary power” (at §55).

WHERE DOES THIS LEAVE THE RELATIONSHIP BETWEEN PROPORTIONALITY AND RATIONALITY?

- In *KP Chamberlain J* did not address this argument, although he did cite *Kennedy* [2014] UKSC 20 and *Pham* [2015] UKSC 19 in which Lords Mance and Sumption respectively stated that in some cases there may be no difference between rationality review and proportionality review.
- CF some domestic case law, that has tended to view these concepts as binary: e.g. *Keyu* [2025] UKSC 69.
- Prof Mark Elliott, *KP v. Foreign Secretary: A Primer on Rationality Review* [2025] Public Law for Everyone Blog:
 - The “*rationality versus proportionality*” debate is “*at worst, a distraction from what is really important*” and “*at best, a shorthand for the real issues that are in play*”.
 - What is important: “*determining the weight of the justificatory burden that is warranted by the case and the extent to which courts, in their adjudicatory role, ought to defer to the decision-maker’s own assessment when deciding whether that burden has been discharged*”.

A & B V. SSFCDA [2026] CSOH 41: WHEN IS DELAY IN DECISION MAKING IRRATIONAL? (1)

- The petitioners, who are foreign nationals, requested consular assistance to leave Gaza on 6.10.25. No decision had been made at the date of the judgment on 24.4.26.
- The issue was whether the delay was irrational. The Judge applied the following principles (at §21):
 - Delay is likely to be held to be irrational only where it is so excessive as to be manifestly unreasonable: *Ullah* [2022] EWCA Civ 550 at §62.
 - The reason for the delay may also be relevant: delay may be unlawful if it is shown to result from actions or inactions that were irrational. The Judge noted “*for example, if there was no rational system in place for considering a request and if the decision-maker simply did not do anything at all, then a relatively short period of delay might be held to be irrational, depending on the surrounding circumstances*” (at §21),
 - The Judge noted that “*even a relatively long delay may be rational and therefore lawful if it is the product of a rational process*” (at §21).
 - [Although cf *K* [2014] EWHC 2477 (Admin) at §15: if a delay period is particularly “gross”, this in and of itself can lead to a finding of irrationality.]

A & B V. SSFCDA [2026] CSOH 41: WHEN IS DELAY IN DECISION MAKING IRRATIONAL? (2)

- The Judge held that “*prejudice is not a sufficient condition for holding a delay to be irrational*” but is a “*relevant factor, at least if it is something known to the decision maker, in assessing whether the delay meets the ‘manifestly unreasonable’ test*” (at §22).
- That the subject matter of the decision concerned foreign relations was relevant; “*deference must be afforded to any reason put forward by a minister for not taking, or at least not yet taking, a decision in matters involving policy or international relations*” (at §23).



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