The Independent Human Rights Act Review

Call for Evidence – Annex to Response from JUSTICE

March 2021

Methodology

The 'All Cases Citing' function on Westlaw was used to find the cases which Westlaw lists as mentioning s.3 HRA in the court's judgment. Only cases where the decision was handed down between 1 January 2013 and 31 December 2020 were considered; in total 593 cases. Cases where s.3 HRA had been used in the reasoning of the court when interpreting legislation and/or applying it to the facts of the case or the reasoning of a lower court were identified.

The following cases were excluded: (i) where the decision of the court in relation to s.3 HRA and/or the Convention had been subsequently overturned on appeal; and (ii) where the court was applying a previous court's decision on the interpretation of the legislation, so was following precedent. However, cases where a previous s.3 HRA interpretation was applied to a different provision or statute for the first time were included.

The cases identified were split into three categories, set out in further detail below:

1. cases in which s.3 HRA was decisive in the interpretation of legislation that would otherwise have been incompatible with Convention rights;
2. cases where s.3 HRA was used to support, or as an alternative to, an interpretation that was reached using normal principles of statutory interpretation; and
3. cases where there was no question of a prima facie breach of Convention rights as a result of the legislation, but s.3 HRA was used to interpret the terms in the legislation in line with the Convention.

1. Cases in which s.3 HRA was decisive in the interpretation of legislation that would otherwise have been incompatible with Convention rights

Twenty-four cases were identified where s.3(1) HRA was used to interpret legislation that would otherwise have been incompatible with Convention rights. In these cases the court expressly used s.3(1) HRA to reach a decision on the interpretation of the legislation, including 'reading it down' or 'reading in' a provision to make it Convention-compliant, that they would not have reached were it not for s.3(1) HRA. This list includes the cases where the court used s.3(1) HRA to render legislation Convention-compliant but on the facts of the case that interpretation did not apply. In these cases, s.3 HRA did not therefore impact the outcome of the case.

2020

1. ***O'Donnell v Department for Communities*** **[2020] NICA 36**

Legislation: Pensions Act (Northern Ireland) 2015, ss.29(1)(d) and 30(1)

A widower applied for bereavement support payment following the death of his wife who had been unable to work throughout her life due to severe disability.

- The support was refused on the basis that the Pensions Act (Northern Ireland) 2015, ss.29(1)(d) and 30(1) required that the deceased must have paid Class 1 or Class 2 National Insurance contributions ("**NICs**").

The Court of Appeal (Northern Ireland) held that:

- The conditions resulted in unjustifiable discrimination against the widower, based on his status as the spouse of a deceased who was severely disabled, and was therefore incompatible with Article 14, read with Article 8 and Article 1 of Protocol 1. The Act had failed to differentiate between those who could work and those, who as a result of a disability, could not work and could never meet the contribution condition.
- The following exception should be read into s.30(3): 'For the purposes of s.29(1)(d) the contribution condition is to be treated as met if the deceased was unable to comply with s.30(1) throughout her working life due to disability' [102].

The court expressly refused proposed readings of s.30 which would risk extending it to the spouse or civil partner or child of a disabled deceased who was less likely to work, and expressly included the need for the inability to work to be applicable throughout the deceased's life.

2. *Re A (Surrogacy: s.54 Criteria)* [2020] EWHC 1426 (Fam)

Legislation: Human Fertilisation and Embryology Act 2008, s.54

The biological parents of a child who was born as a result of surrogacy arrangements applied for a parental order. However, an issue arose as although the biological parents were in a relationship at the time of the surrogacy agreement, they had since separated. The parental order was overwhelmingly in the child's best interests; if it were to not be made the child was 'likely to be denied the social and emotional benefits of recognition of his relationship with his parents' [54].

Section 54(2)(c) required the mother and father to be 'two persons… living as partners in an enduring family relationship' and the question was whether this was met where the parents were separated and no longer in a relationship with each other. The mother and father were committed to the child's welfare and future care. The court therefore considered that the child had a 'family life' with both his parents and therefore the child's Article 8 and Article 14 rights were engaged. Section 3(1) HRA required, where possible, that a Convention-compliant interpretation was given to the statutory provisions, and this required the court to 'focus on the parents' agreement in respect of the future care arrangements for [the child] and their joint commitment to be fully involved in his life', so as to find that the s.54(2)(c) requirement was satisfied.

The application had been made more than two years after the time limit of six months from the child's birth prescribed by s.54(3). However, applying previous case law (*Re X (A Child) (Surrogacy: Time Limit)* [2014] EWHC 3135, which was based on ordinary statutory interpretation) the court held that the expiry of the six-month time limit was not a bar to the court making a parental order. To hold otherwise would be 'nonsensical' and would deprive the child of the enormous benefit of a parental order.

The requirement at s.54(4)(a) that 'the child's home must be with the applicants' would be satisfied, despite the parents not living under the same roof. This followed previous case law (*AB (Foreign Surrogacy – Children Out of the Jurisdiction)* [2019] EWFC 22) which made clear that 'the term 'home' must be given a wide and purposive interpretation.

3. *Re X (Parental Order: Death of Intended Parent Prior to Birth)* [2020] EWFC 39

Legislation: Human Fertilisation and Embryology Act 2008, s.54

A child was born as a result of a surrogacy arrangement. After the surrogacy arrangement was entered into and when the surrogacy mother was five months pregnant, the intended father whose gametes were used to create the embryo, died unexpectedly. The question was whether a parental order could be made naming the intended father. The conditions of the Human Fertilisation and Embryology Act 2008 s.54 were not met as it required there to be two applicants for a parental order and would refer to both applicants (ss.54(1), 54(2)(a), 54(4)(a) and 54(5)).

There was significant benefit to the child of there being a parental order.

- Without the parental order there would be no legal relationship between the child and her biological father. She would be denied the social and emotional benefits of the recognition of that relationship and could possibly be financially disadvantaged.
- The child's Article 8 rights to private life were engaged. The state had a positive responsibility to ensure that it respected the child's right to a private life and that extended to ensuring recognition of her identity as the child of her deceased father (previous case law applied).
- Article 14 was also engaged. Without a parental order being made, the child was not able to have a birth certificate that reflected the relationship and connection that she had with her deceased father as her parent, solely by virtue of the circumstances of her birth through surrogacy.

There was no reason to believe that Parliament either foresaw or intended the potential injustice which would result if a parental order could not be made where the indented father died after the embryo transfer and before the child's birth, but otherwise all the conditions of s.54 were met.

Section 3(1) HRA therefore required s.54 to be read down to allow a parental order to be made. The reading down did not go against the grain of the legislation. It provided for the order that was accepted is in the best interests of a child born of a surrogacy arrangement. The parental order was specifically created for children born as a result of a surrogacy arrangement. The reading down was compliant with the policy of the Human Fertilisation and Embryology Act 2008 which 'sought to provide a comprehensive legal framework for those undertaking assisted conception, with the aim of securing the rights of any child born as a result' [95].

2019

4. *Re JC Druce Settlement* [2019] EWHC 3701 (Ch)

Legislation: Family Law Reform Act 1987 ("**FLRA**"), s.19

A settlement trust had been made in 1959 which defined the beneficiaries as 'all the male descendants of the Settlor's brothers and sisters ... who are already in being or shall be born before the Vesting Day'. The trustees of the settlement applied for an order under the Administration of Justice Act 1958 s.48(1) as to the construction of the term 'descendants'.

- At common law, 'descendants' were confined to legitimate blood relations and this definition would exclude certain potential members of the class of beneficiaries (including several male children born to parents who never married and a male whose mother had been adopted).
- The effect of the FLRA s.1(1) was that an illegitimate child was treated a child in the same way as a legitimate child. However, the transitional provisions in the Family Law Reform Act 1987 s.19(1) meant that this would not apply to the settlement as it has been made before 4 April 1988.

The Court held, relying on the reasoning in *Hand v George* [2017] EHC 533 (Ch) (see below), that:

- In relation to the illegitimate children, the FLRA s.19(1) should be read down to make it compliant with the Convention and the right not to be discriminated against (specifically the Article 14 and Article 8 rights of the illegitimate children). This would mean that s.1(1) of the FLRA would apply to settlements which pre-dated the coming in force of the FLRA. This was consistent with the scheme of the FLRA in ensuring that illegitimate children were treated in the same way as legitimate children.
- In relation to the son of the adopted mother, despite him not being considered at common law as a 'descendent' and therefore not a beneficiary, it was impermissible and contrary to Article 14 for him to be discriminated against on the basis that his mother was adopted.

5. *Gilham v Ministry of Justice* [2019] UKSC 44

Legislation: Employment Rights Act 1996 ("**ERA**"), s.230(3)(b)

A district judge had been dismissed after she had raised concerns about the effect of cost-cutting reforms to the courts. She claimed that her complaints were qualifying disclosures under the ERA, s.43B and she issued proceedings alleging that she had suffered detriments for making the disclosures, contrary to s.47B.

The whistleblowing protections under the ERA are only available for certain categories of individuals, including 'workers' defined at s.230(3)(b). The Supreme Court held that a judge was not a 'worker' within this definition and therefore would be denied the whistleblowing protections of the ERA. The denial of these protections amounted to an unjustified breach of the judge's rights under Article 14 when read with Article 10. The judge, by reason of her occupational classification as a non-contractual office holder, had been treated less favourable than those in an analogous situation. There was no reasonable justification for the difference in treatment and no legitimate aim had been put forward by the Ministry of Justice.

There was no evidence that Parliament or the executive had addressed their minds to the exclusion of the judiciary from protection of the ERA. The judiciary had been included within the Equality Act 2010, which has express provisions for the prohibition of discrimination in relation to, among other things, the appointment to public offices, and within EU-derived employment rights, which showed that affording judges some workers' rights did not offend against any fundamental constitutional principle. Therefore s.230(3)(b) should be interpreted so as to include judicial officeholders, to the extent that their exclusion would be incompatible with Convention rights.

6. *NA v Secretary of State for Work and Pensions* [2019] UKUT 144 (AAC)

Legislation: Social Security and Family Allowances (Polygamous Marriages) Regulations 1975, Regs. 1 and 2

The claimant married her husband in Pakistan at a time when he was still married to (but separated from) his first wife under English law. The husband later divorced his first wife in the English courts. When her husband died, the claimant claimed a bereavement payment and widowed parent's allowance under ss. 36 and 39A respectively of the Social Security Contributions and Benefits Act 1992.

- The claims were refused on the basis that the claimant's marriage had been invalid pursuant to the Matrimonial Causes Act 1973, s.11(d), being a polygamous marriage entered into outside England and Wales at a time when one of the parties, namely the claimant's husband, was domiciled in England and Wales.

- Regulations 1 and 2 of the Social Security and Family Allowances (Polygamous Marriages) Regulations 1975 provided that, for the purposes of the Social Security Contributions and Benefits Act 1992, a 'polygamous marriage' should be treated as having the same consequences as a monogamous marriage for any day throughout which it was 'in fact monogamous'.

The Upper Tribunal held that:

- The refusal of the benefits amounted to unjustified discrimination on the ground of the claimant's marital status, contrary to Article 14 read with Article 1 of Protocol 1. The claimant as the sole surviving widow of an overseas religious marriage was in an analogous position to a 'lawful' widow under a marriage recognised by the law of England and Wales and had been treated differently from such a widow. There was no justification for the difference in treatment in circumstances where the claimant was the only surviving spouse of the husband and the law of England and Wales already recognised the validity of some polygamous marriages.

- Section 3(1) HRA was used to give a Convention-compliant reading to Regs. 1 and 2:

    - The definition of 'polygamous marriage' in Reg. 1(2) could be read as including marriages which were not valid marriages recognised according to the laws of England and Wales but were recognised under the laws of another jurisdiction, such as the claimant's marriage under the laws of Pakistan.

    - Further, Reg. 2 could be read as not requiring that a polygamous marriage was 'in fact monogamous' throughout the marriage and so as applying to the claimant's marriage at least from the date of her husband's divorce from his first wife.

- Applied to the claimant's marriage this meant that her marriage was treated as having the same consequences as a monogamous marriage, at least from her husband's divorce, so she was entitled to bereavement payment and widowed parent's allowance.

7. Pierhead Drinks Ltd v Revenue and Customs Commissioners [2019] UKUT 7 (TCC)

Legislation: Tribunals, Courts and Enforcement Act 2007 ("**TCEA**"), s.11(2) and/or the Tribunal Procedure (Upper Tribunal) Rules 2008

Section 11(2) of the TCEA provides that 'any party to a case' has a right of appeal to the Upper Tribunal. Although Pierhead was nominally the appellant, only a director, Mr Hercules, made submissions. Mr Hercules had not been party to the proceedings in the First-tier Tribunal, and, unlike the High Court, the Upper Tribunal did not have a broad inherent jurisdiction to allow him to appeal. The First-tier Tribunal had found that Mr Hercules was not a fit and proper person to be a director of a company under the Warehousekeepers and Owners of Warehoused Goods Regulations 1999.

The Upper Tribunal held that, following the decision in *Re W (A Child)* [2016] EWCA Civ 1140 (see below), if it was satisfied that Mr Hercules's rights under Article 8 were infringed in this case then the Upper Tribunal had a duty under s.3 HRA to read and apply s.11 TCEA and/or the Tribunal Procedure (Upper Tribunal) Rules 2008 in such a manner as to provide him with a right of appeal and, by inference, the means to exercise it. However, in the absence of procedural unfairness in the First-tier Tribunal it was held that Mr Hercules's Article 8 rights were not infringed, so no such duty arose.

2018

8. ***C v Governing Body of a School*** **[2018] UKUT 269 (AAC)**

Legislation: Equality Act 2010 (Disability) Regulations 2010, reg. 4(1)(c)

A child with autism had been excluded from school for behaving aggressively towards others. The child's parents brought a claim under the Equality Act 2010 on the basis that the exclusion amounted to disability discrimination.

- The Equality Act 2010 (Disability) Regulations 2010, reg. 4(1)(c) excludes from the definition of impairments under the Equality Act 2010 'a tendency to physical or sexual abuse of other persons'.
- The lower Tribunal considered that pursuant to, reg. 4(1)(c), although the child generally met the definition of a disabled person for s.6 Equality Act 2010, he was not protected by the Equality Act 2010 insofar as his 'tendency towards physical abuse' was concerned.

The Upper Tribunal held that:

- There was a difference in treatment between disabled children whose condition or impairment did not give rise to an enhanced tendency to physical abuse and those who did. There was no obvious relevant difference between the two groups and there was an unjustified breach of Article 14 read with Article 2 of Protocol 1. In particular, the consequence of reg. 4(1)(c) was to allow schools to exclude children without providing support that might enable them to manage their behaviour and without holding schools accountable for any reasonable adjustments that might or might not have been made.
- Section 3(1) HRA could be used to construe reg. 4(1)(c) so that it did not apply to children in education who have a recognised condition that is more likely to result in a tendency to physical abuse. This would not disturb a fundamental feature of the regulation which had the primary intention of excluding 'anti-social' or 'criminal activity' (as set out in the explanatory memorandum to the Equality Act 2010 (Disability) Regulations 2010) and not children whose behaviour in school is a manifestation of the very condition which calls for special educational provision to be made for them.
- In the alternative, the court recognised that s.6(1) HRA would also require the court to disapply reg. 4(1)(c) in the circumstances of the case.

2017

9. ***Wandsworth LBC v Vining*** **[2017] EWCA Civ 1092**

Legislation: Trade Union and Labour Relations (Consolidation) Act 1992 ("**TURLCA**"), s.280

Two Parks Constables were made redundant following a review by Wandsworth LBC which led to the decision to disband the parks police. The employees brought unfair dismissal proceedings and their trade union brought proceedings seeking protective awards for failure to comply with the consultation requirements under TULRCA, s.188.

As written, TULRCA, s.280 prevented police officers from benefitting from the protections of ss.188 to 192 of the TURLCA. It was held that this exclusion constituted a breach of the Parks Constables' Article 11 rights to collective bargaining.

A new, rights-compliant, formulation of s.280 could not be formulated. However, the court held 'it is not necessary, even though it is often useful, for a court to commit itself to such a formulation. In our view it would be sufficient for us to say that, when construed in accordance with section 3, section 280 does not apply to the class with which we are here concerned' [74].

This construction did not go against the grain of s.280, which had the primary intention of excluding 'traditional' police forces rather than parks police forces.

10. *Re R and E (Children)* [2017] 3 WLUK 606

Legislation: Adoption and Children Act 2002, s.28

Section 28 of the Adoption and Children Act 2002 prevents any person from causing children to be known by a new surname following a placement order but prior to the making of the adoption orders. R and E were placed for adoption in 2014 and an application for an adoption order was issued in 2016. The father contested this application and stated that the prospective adopters had caused or permitted a change in the surname by which the children were known at school. The adoption order was made in September 2016.

From 2014 the children had requested to be known by their prospective adopters' surname and had been informally known in this fashion at school, although all official documents at the school maintained their original surname. The local authority was aware of this informal usage of the new surname and had provided guidance outlining that the name could not be formally changed until the adoption order was made. It was held the local authority were sanctioning informal use of the new name by advising they could be 'known as' the new surname.

Section 28 of the Adoption and Children Act did not distinguish between formally and informally knowing a child by a new surname. Reading s.28 in light of s.3 HRA, 'causing' a child to be known by a new name applies equally to deliberate actions and omissions. The failure to issue advice to the prospective adopters discouraging the use of the new surname prior to the order being made resulted in a breach of the father's Article 8 rights and a declaration to that effect was granted.

11. *Hand v George* [2017] EWHC 533 (Ch)

Legislation: Adoption Act 1976, sch. 2 para. 6

By his will dated 1946, Henry Hill, the testator, left his residuary estate to his three children (G, K and J) in equal shares for life with the remainder in each case to such of their child / children who attained the age of 21. Under the adoption of Children Act 1926, s.5(2), which was then in force, adopted children were not included as 'children' for the purposes of a testamentary disposition of property. G died without children, his share passing to his siblings, K and J, half each for life and the remainder of each half to any of their children who attained the age of 21. The defendants were the children of J, who died in 1981. The claimants were the adopted children of K, who died in 2008.

The Adoption of Children Act 1949 and the Adoption Act 1976 s.39 provided that adopted children were treated as children of their adopters. However, sch. 2, para. 6 of the Adoption Act 1976 prevented the application of the Adoption Act 1976 s.39 to existing instruments, such as Henry Hand's 1946 will. The court held that this breached the adopted children's Article 14 and Article 8 rights. Therefore, the court read down sch. 2, para. 6 of the Adoption Act 1976 so it would cease to apply to existing instruments, allowing children and adopted children to inherit equally as 'children', even if the relevant instrument was made before 1976.

2016

12. *Fessal v Revenue and Customs Commissioners* [2016] UKFTT 285 (TC)

Legislation: Taxes Management Act 1970 (the "**TMA**"), s.29

The appellant was found to have underpaid tax for the years 2005/06 and 2007/08 but had overpaid for the year 2006/07. Any claim for overpayment relief for the 2006/07 tax year was out of time. HMRC then raised discovery assessments under s.29 TMA for the 2005/06 and 2007/08 tax years on the basis that the appellant had been 'careless' in causing the underpayment of tax.

The Tribunal considered, following *R v Waya* [2012] UKSC 51 (which concerned the Proceeds of Crime Act 2002), that it should read the power conferred on HMRC under s.29 as being a power to issue an assessment which makes good the loss of tax, but only where assessing that amount does not breach the taxpayer's rights under Article 1 of Protocol 1, to the extent that giving effect to those rights does not go against the 'grain of the legislation'.

In the circumstances of the case, where income had been shifted between tax years due to a discovery assessment which resulted in an overpayment in respect of one tax year which was related to an underpayment in respect of another tax year, it was not inconsistent with the 'grain of the legislation' to read s.29 in such a way as to allow the overpaid tax to be taken into account. There was nothing in the express language of s.29 and sch.1AB and para.3, the provisions which created the mismatch between the time limit for claiming a repayment of overpaid tax and the time limit for HMRC to make a discovery assessment, to suggest that double taxation was intended [56].

The Tribunal concluded that Article 1 of Protocol 1 should work so as to amend the quantum of the assessment that HMRC was empowered to make, rather than the validity of the assessments. Specifically, the aggregate amount of tax which was payable under the two assessments for the tax years 2005/06 and 2007/08 was to be reduced to reflect the overpaid tax for 2006/07.

13. *Re W (A Child) (Care Proceedings: Non Party Appeal)* [2016] EWCA Civ 1140

Legislation: Matrimonial and Family Proceedings Act 1984, s.31K

A social worker and police officer who were witnesses in family proceedings and the subjects of adverse judicial findings and criticism, appealed against the inclusion of their names in a final judgment that had yet to be handed down formally and published, requesting the relevant passages be excised from the judgment. The judgment related to allegations of sexual abuse in ongoing care proceedings. The dismissal of the sexual abuse allegations was not appealed against.

The adverse findings had the potential to impact adversely on the standing, the employment prospects, and personal lives of the witnesses, yet they had not been given the opportunity to meet the allegations during the course of the trial. This was held to infringe their Article 8 rights.

Neither the social worker nor the police officer were full parties during the fact-finding hearing. However, they had both achieved 'intervenor' status and were, therefore, additional 'parties' to the proceedings under the Family Procedure Rules 2010 r.12.3 and r.12.4. Alternatively, they could be classed as 'appellants' following the Court of Appeal's interpretation of r.52.1(3)(d) of the Civil Procedure Rules in *MA Holdings Ltd v George Wimpey Ltd* ([2008] EWCA Civ 12). It was unnecessary to establish with certainty the precise procedural status of the witnesses in the lower court in order to decide whether they could be 'appellants' in the instant court. However, if an individual failed to achieve the status of 'appellant' by those suggested under the Family Procedure Rules or following *MA*

Holdings, in circumstances where it was established that the individual's rights under the ECHR Article 8 had been breached by the outcome of the proceedings in the lower court, the instant court had a duty to afford that individual a right of appeal by reading down the legislation.

2015

14. *PML Accounting Ltd v Revenue and Customs Commissioners* [2015] UKFTT 440 (TC)

Legislation: Finance Act 2008, sch.36

HMRC issued a taxpayer information notice (a "**taxpayer notice**") to the appellant company (PML) under the Finance Act 2008, sch.36, para.1. This paragraph gives HMRC the power to issue notices requiring a person to provide information or produce documents to the extent they are reasonably required for the purpose of checking the person's tax position. The taxpayer notice related to whether the arrangements existing between PML and its clients would bring PML within the scope of the managed service company legislation. If it did, the primary obligation to account for tax would fall on PML's clients.

In the first instance the court found that the documents and information sought by the taxpayer notice did not relate to the tax position of PML, so did not comply with the requirements of the Finance Act 2008, sch.36, para.1.

However, even if the taxpayer notice did concern the tax position of PML, it also concerned the tax position of PML's clients who were the subject of the enquiry. The taxpayer notice issued under sch.36, para.1 breached PML's clients' Article 8 rights to privacy. It was not issued in accordance with the law as there were insufficient procedural safeguards and PML's clients were unaware of the notice.

However, sch.36 (para.2 for known taxpayers and para.5 for a class of persons whose individual identities are not known) contained specific provisions relating to information notices which concerned a third-party's tax position (an "**information notice**"). These provisions have specific safeguards, including that they can only be issued with the prior consent of either the taxpayer or the Tax Tribunal and would likely not breach Article 8.

Section 3(1) was used to interpret sch.36 such that, in circumstances where a taxpayer notice under para. 1 would breach the Article 8 rights of a person (other than the taxpayer), HMRC must seek an information notice under para.2 or 5 and not a taxpayer notice under para. 1. The notice in the case was therefore unlawful.

The Tribunal also stated that s.6(1) HRA also meant that HMRC had acted unlawfully in breaching PML's clients' Convention rights.

15. *Stevenson v General Optical Council* [2015] EWHC 3099 (Admin)

Legislation: The Opticians Act 1989, s.23G(3)

An appellant optometrist sought to appeal against a disciplinary decision of the General Optical Council's Fitness to Practise Committee. The Opticians Act 1989, s.23G(3) required an appeal to be within 28 days. The appeal was found to have been made outside the 28-day time limit.

The Court recognised that, despite previous case law having traditionally treated appeal time limits from regulatory bodies where the relevant statute contained no provision for extending time as absolute, the Court of Appeal had held in *Adesina v Nursing and Midwifery Council* [2013] EWCA Civ 818 (see below) (following the Supreme Court in *Pomiechowski v The District Court In Legnica Poland* [2012] UKSC 20) that in similar statutory appeals relating to the Nursing and Midwifery Council strict time limits had to be read so as to comply with Article 6. The time limit under s.23G(3) could therefore be extended in 'exceptional

circumstances' where enforcing the time limit would impair the very essence of the statutory right of appeal. The application of the *Adesina* jurisprudence was accepted by both parties since the instant case was also a statutory regime for the regulation of a profession.

On the facts of the case (which related to the failure of a postal system and the posting of the notice of appeal at a late stage) there were no exceptional circumstances which required an extension of the time limits to prevent the denial of justice and to comply with Article 6.

16. *Westfoot Investments Ltd v European Property Holdings Inc* 2015 S.L.T. (Sh Ct) 201

Legislation: The Heritable Securities (Scotland) Act 1894, s.5(1)

A development company had entered into a loan with a finance company and the development company had granted securities in the finance company's favour over two properties. The development company defaulted on the loan repayments and the finance company made an application seeking (a) authority from the court to enter into possession of two properties, (b) an order ordaining the development company to remove from the properties, and (c) a warrant for the development company's ejection from the properties.

In relation to (c), the Heritable Securities (Scotland) Act 1894, s.5(1) covered a creditor's 'power to eject [a] proprietor in personal occupation', for lands given as security by the proprietor for a debt owed to the creditor and the proprietor is in default on the debt or interest. Section 3(1) HRA was used to read the phrase 'in personal occupation' down to 'in occupation' so that it could be used to eject legal (juridical) persons (i.e. companies) in civil occupation as well as natural persons in actual personal occupation. This was necessary for the legislation to be complaint with the creditor's Article 1 of Protocol 1 rights since it was being deprived of its money unlawfully. This reading was considered to not alter the intention of the legislation and would be in line with the legislation in providing a summary method of removal of an occupier in default of a heritable, now standard, security.

On the facts of the case, however, there was no evidence that the development company was actually using or occupying the properties, which were actually tenanted.

2014

17. *Re HM's Application for Judicial Review* [2014] NIQB 43

Legislation: Mental Health (Northern Ireland) Order 1986 arts.32 and 36

The applicant was a 34-year-old mental health patient, detained for treatment. His sister was appointed as his 'nearest relative', however she lived in England and did not visit him. The applicant wished his cousin, who lived in Northern Ireland and visited and phoned regularly, to be appointed as his nearest relative.

The Mental Health (Northern Ireland) Order 1986 art.32 did not include cousins under the definition of 'relative'. Article 36 of the Order provided for the County Court to appoint an alternative person to exercise the rights of the nearest relative on application by a relative, an approved social worker or a person with whom the patient resided. The applicant submitted that the absence of a mechanism allowing him to apply to change his nearest relative represented an infringement of his Article 8 rights and was not justified or proportionate.

It was held that both arts.32 and 36 were incompatible with a patient's rights under article 8 because they did not provide a mechanism for the patient to apply to change the person appointed as his nearest relative. Article 36 should therefore be read to include 'or the applicant' into the list of people entitled to apply

for a change of nearest relative. Also, the reasons for a change in nearest relative should be read to include 'That the nearest relative of the patient is otherwise not a suitable person to act as such'. This reading of arts.32 and 36 adopted the wording of the equivalent provisions of the Mental Health Act 2007, s.23 in England and Wales.

18. *Warren v Care Fertility (Northampton) Ltd* [2014] EWHC 602 (Fam)

Legislation: Human Fertilisation and Embryology Act 1990

Human Fertilisation and Embryology (Statutory Storage Period for Embryos and Gametes) Regulations 2009, regs.4 and 7

The claimant sought a declaration that it was lawful for the sperm of her late husband to be stored beyond April 2015. In 2005, following diagnosis of a brain tumour requiring radiotherapy, the husband had samples of his sperm taken and stored in response to the risk of infertility following radiotherapy. In 2008 he named the claimant as his partner and consented to her using his sperm after his death and also extended the storage period to 10 years.

The Human Fertilisation and Embryology Act 1990 provided for a deceased's sperm to be used by 'his named partner' to create an embryo. The initial maximum storage period was 10 years. The Human Fertilisation and Embryology (Statutory Storage Period for Embryos and Gametes) Regulations 2009 enabled that period to be extended, to a maximum of 55 years, subject to certain requirements under regs.4 and 7. The sperm provider had to give written consent for storage beyond 10 years, and a medical practitioner had to certify that the donor 'is' likely to be prematurely infertile.

A narrow reading of the statute would have violated the claimant's Article 8 rights. She wanted to use sperm of her deceased husband to have a baby and her husband had wanted her to do so, but the doctor had certified the case after death instead of before death. A narrow reading of the statute would require the medical certificate to be provided during a man's lifetime (because of the use of the present tense). This did not tally with other wording in the statute which was far less restrictive, nor the intention of Parliament in enacting the statute (i.e. enabling a deceased man's sperm to be used providing his wish was recorded in writing). Using s.3(1) HRA the court changed 'is… prematurely infertile' to 'was, or may have been likely to become' under para.3(b) of regs.4 and 7.

19. *Nas & Co Ltd v Revenue and Customs Commissioners* [2014] UKFTT 50 (TC)

Legislation: Finance Act 1994, s.16(4)

The appellant trader appealed against the decision of the Commissioners not to restore seized goods. The Commissioners had seized alcohol for which the trader did not have the paperwork. Invoices were subsequently provided by the trader and restoration of the goods was sought. Restoration was refused by the Commissioners leading the trader to request a review of that decision under the Finance Act 1994. The Commissioners upheld their refusal, referring to an internal report which had only been partially disclosed to the trader. The trader appealed to the Tribunal under s.16 of the 1994 Act.

Under s.16(4) appeals to the Tribunal are limited to a consideration of whether the respondent's decision to refuse restoration of the goods was reasonable. The statutory question was whether the 'tribunal are satisfied that the Commissioners could not reasonably have arrived at' the decision. As the appellant trader and the Tribunal had not had the benefit of seeing all of the report on which the decision to refuse restoration was based, the risk of infringement of their Article 6 rights to a fair trial arose.

It was held that 'it is possible to give effect to [s.16(4)] in a way which is compatible with Article 6 of the Convention by treating a decision which is shown in any respect to be without reason as being to that extent one which could not reasonably have been arrived at. In the context of a regime in which the burden

of proof lies on the Appellant, it seems to us that s.3(1) of the Human Rights Act 1998 requires us to give s.16(4) that interpretation.' The Commissioners' decision to rely on undisclosed material was therefore unreasonable.

20. *R. v McGreechan (Ryan)* [2014] NICA 5

Legislation: Criminal Justice Act 1988 ("**CJA**"), s.159(1)(c)

A young offender was convicted of serious sexual offences. As the appellant was 16 years old at that time and was a child for the purposes of the Criminal Justice (Children) (Northern Ireland) Order 1998 art.22 no report could be published naming him. A reporter requested the lifting of reporting restrictions and the judge held that the balance came down in favour of lifting the restriction. The young offender sought to appeal against the lifting of the reporting restriction.

The application was lodged under the section 8 of the Criminal Appeal (Northern Ireland) Act 1980, which provided for an appeal against sentence following conviction on indictment. However, the decision to remove the reporting restrictions did not fall within the definition of "a sentence" and did not give the Court of Appeal jurisdiction to deal with the application.

Section 159 of the CJA 1988 provided the media with a right of appeal in the event reporting restrictions are ordered. No equivalent right is available to the child in the Crown Court. The Court of Appeal held that the exclusion of the child from any appeal process in Crown Court proceedings in this jurisdiction constitutes a restraint on the child's access to justice which violates the child's Article 6 rights. Therefore s.159(1)(c) should be read with the italicised words read in:

(1) a person aggrieved may appeal to the Court of Appeal, if that court grants leave, against:

…

(c) any order restricting the publication of any report of the whole or any part of a trial on indictment or any such ancillary proceedings *or any discharge of such order or refusal by the Court to make such order*;

and the decision of the Court of appeal shall be final.'

Nevertheless, on the facts of the case the balancing exercise came down in favour of the reporting restrictions being lifted.

2013

21. *Blackburn (t/a Cornish Moorland Honey) v Revenue and Customs Commissioners* [2013] UKFTT 525 (TC)

Legislation: Value Added Tax Regulations 1995, reg.25A

The appellants were members of the Seventh-day Adventist Church. Although the church did not require it, they chose to shun computers, the internet, TV and mobile phones, believing only the righteous would be saved on the second coming of Christ, and in order to be righteous they much act in accordance with their own conscience.

Under the Value Added Tax Regulations 1995, reg.25A, a person registered for VAT had to file their return online unless exempt in accordance with reg.25A(6)(a) as a practising member of a religious society or order whose beliefs were incompatible with electronic communications. As written, the exemption referred to a religious society or order whose beliefs were incompatible with electronic communications rather than an individual's religious beliefs. The requirement to file an online VAT return in violation of their religious beliefs breached the appellants' Article 9 rights to manifest their religion and beliefs.

In accordance with s.3 HRA, it was possible to give reg.25A(6)(a) a strained reading entitling the appellants to the exemption, interpreting the 'whose' as referring to the to the beliefs of the appellants rather than the beliefs of their religious society or order.

22. *O'Kane v Revenue and Customs Commissioners* [2013] UKFTT 307 (TC)

Legislation: Taxes Management Act 1970, s.59C

Mr O'Kane was a subcontractor working in the construction industry. HMRC incorrectly calculated his tax liability, failing to accurately take into account payments made under the Construction Industry Scheme when determining his self-assessment tax liability. Believing there was an underpayment HMRC charged two surcharges. Upon deducting the Construction Industry Scheme payments correctly there was no underpayment and the surcharges were incorrectly charged. However, the Taxes Management Act 1970 s.59C(9) explicitly limits the Tribunal's jurisdiction to set aside the incorrectly charged surcharges, save when 'throughout the period of default, the taxpayer had a reasonable excuse for not paying the tax'.

Article 6(1) was engaged as a penalty surcharge for late tax self-assessment fell under the criminal head of Article 6(1) since it was deterrent and punitive in nature, despite being civil in nature under domestic UK law.

TMA s.59C(9) explicitly excludes the normal appeal jurisdiction of the Tribunal. The Tribunal found that to read down the legislation so as to give the Tribunal that jurisdiction would be 'on the wrong side of the boundary between interpretation and amendment of the statute.' The Tribunal lacked the jurisdiction to issue a declaration of incompatibility under s.4 of the HRA. As HMRC could not remedy the situation they had not acted unlawfully within the meaning of s.6 of the HRA, meaning the Tribunal had no power to remedy the breach under s.8 of the HRA, by discharging the surcharges.

As Mr O'Kane was not, as a matter of fact, in default, under the ordinary meaning of s.59C(9) a reasonable excuse would not be sufficient to set aside the surcharges. Instead the Tribunal held TMA s.59C(9) should be read down as follows:

'…the tribunal may—

(a) if it appears that, throughout the period *during which HMRC has held there to be a default,* the taxpayer had a reasonable excuse for *the behaviour which caused HMRC to levy the surcharge,* set aside the imposition of that surcharge;'

That Mr O'Kane had in fact no liability would amount to a reasonable excuse for this period and the surcharges were set aside. Section 59C was repealed by SI 2011/702 with effect from 1 April 2011.

23. *Mba v Merton LBC* [2013] EWCA Civ 1562

Legislation: Employment Equality (Religion or Belief) Regulations 2003, reg.3(1)(b) (since replaced by the Equality Act 2010)

A Christian care worker brought a claim alleging indirect religious discrimination arising from her obligation to work on Sundays. The Employment Equality (Religion or Belief) Regulations 2003, reg.3(1)(b)(iii) provided that a provision, criterion or practice ("**PCP**") which constituted indirect discrimination could be justified if it was a 'proportionate means of achieving a legitimate aim'.

The Court of Appeal found that the Employment Tribunal, which had dismissed the care worker's claim, had made an error of law when considering the third stage justification test by placing weight on its finding that her belief that Sunday should be a day of rest and worship was not a core component of the Christian faith. However, notwithstanding its error of reasoning, the Tribunal's conclusion that the imposition of the PCP was proportionate was plainly and unarguably right. Therefore, the Court of Appeal declined to allow the care worker's appeal.

Maurice Kay LJ based his reasoning on ordinary statutory interpretation and declined to use s.3 HRA. However, Elias LJ and Vos LJ considered that Article 9 and s.3 HRA were required.

Without considering Article 9, whether the belief was a core component would at least indirectly have been a legitimate factor for the Tribunal to consider, since a PCP which interferes with the manifestation of a core belief 'will impinge on a greater number of potential adherents than would otherwise be the case; and in general the greater the impact, the harder it is to justify the provision' [31].

However, the same analysis did not apply where the right to religious freedom under Article 9 was engaged. Article 9 did not require a claimant to establish any group disadvantage and the question of proportionality depended on the legitimate aims of the employer, which would likely relate to the difficulty or otherwise of accommodating the religious practice or the particular individual claimant.

Article 9 combined with s.3(1) HRA had the effect of making it irrelevant, for the purposes of determining proportionality at reg.3(1)(b)(iii), to examine whether the claimant's refusal to work on Sunday was a core component of the Christian faith. It meant that in the context of justification it did not matter whether a claimant was disadvantaged along with others or not, and it could not in any way weaken a case with respect to justification that the claimants' beliefs were not more widely shared or did not constitute a core belief of any particular religion.

24. *Adesina v Nursing and Midwifery Council* [2013] EWCA Civ 818

Legislation: Nursing and Midwifery Order (2001) 2002, art.29(10)

The appellants brought appeals against decisions of the Nursing and Midwifery Council to remove them from the register. However, the appeals were brought outside the 28-day time limit to bring an appeal provided for in the Nursing and Midwifery Order (2001) 2002, art.29(10).

Previously an absolute approach had been taken in the case law to the 28-day time limit in the 2002 Order (for example, *Mitchell v Nursing and Midwifery Council* [2009] EWHC 1045 (Admin)). However, the Supreme Court's decision in *Pomiechowski v District Court of Legunica Poland* [2012] UKSC 20 established that an absolute statutory time limit (in that case under the Extradition Act 2003) may need to be read down so that the court would have a discretion in exceptional circumstances to extend the statutory time limit, where such provisions would otherwise operate to prevent an appeal in a manner conflicting with the right access to an appeal process under Article 6.

Following *Pomiechowski*, the Court of Appeal rejected the proposition that the 28-day time limit under art.29(10) of the 2002 Order was absolute and inflexible. Article 29(10) had to be read down so that time could be extended in exceptional circumstances, namely where enforcing the 28-day limit would impair the very essence of the statutory right of appeal.

On the facts of the case the Court of Appeal did not consider that there were exceptional circumstances in place and there could be no extensions of time to the two cases in front of it. There have since been subsequent cases where the court refused to the extend the time limits as the circumstances were not exceptional as required by *Adesina*, for example, *Daniels v The Nursing and Midwifery Council* [2015] EWCA Civ 818.

2. Cases where s.3 HRA was used to support, or as an alternative to, an interpretation that was reached using normal principles of statutory interpretation

Thirty cases, set out in the below table, were identified where the court reached its conclusion using ordinary principles of statutory interpretation but s.3(1) HRA and the Convention were used to support these conclusions. These cases include instances where s.3(1) HRA and the Convention were mentioned by the court as:

- an alternative means by which the same conclusion or result could be reached;
- one of a number of factors influencing a court's interpretation; and
- supporting the method of statutory interpretation used by the court. For example, where the court noted that the broad and purposive interpretation they had given to the statute was also compatible with their obligation to read legislation in a Convention-compliant manner.

No.	Case	Provision(s) in issue	Interpretation adopted using ordinary statutory interpretation supported by s.3 HRA
2020			
1.	*Scottow v Crown Prosecution Service* [2020] EWHC 3421 (Admin)	Communications Act 2003, s.127(2)(c)	The offence of improper use of a public electronic communications network could not extend to posting annoying tweets.
2.	*Re A (A Child) (Adoption Time Limits s.44(3))* [2020] EWHC 3296 (Fam)	Adoption and Children Act 2002, s.44(3)	Extension of time limit for making an adoption application after giving notice of an intention to apply.
3.	*R. (on the application of EG) v Parole Board* [2020] EWHC 1457	Parole Board Rules 2019, r. 10(6)(6)	Parole Board Rules permitted the Parole Board to appoint a litigation friend.
4.	*Punch Partnerships (PTL) Ltd v Jonalt Ltd* [2020] EWHC 1376 (Ch)	Small Business, Enterprise and Employment Act 2015, s.43(4)(a)(ii) and the Pubs Code etc Regulations 2016, reg. 33	An arbitrator did not have the power to impose an obligation in a lease between a tenant and landlord to a pub.
5.	*London Steam-ship Owners' Mutual Insurance Association Ltd v Spain* [2020] EWHC 1582 (Comm)	State Immunity Act 1978, ss.3(1)(a) and 3(3)(c)	Definition of 'commercial transaction' for whether a state benefitted from state immunity was not exhaustive.
6.	*Punch Parterships (Ptl) Ltd v Highwayman Hotel (Kidlington) Ltd* [2020] EWHC 714 (Ch)	Small Business, Enterprise and Employment Act 2015, s.43 and Pubs Code etc. Regulations 2016, reg. 30	The Office of the Pubs Code Adjudicator did not have the power to order that provisions be inserted into a revised offer.
2019			

No.	Case	Provision(s) in issue	Interpretation adopted using ordinary statutory interpretation supported by s.3 HRA
7.	*Bagguley v E* [2019] EWCOP 49	Human Tissue Act 2004, s.1 and sch. 4 para. 2	An order made under the Mental Capacity Act 2005 s.16 facilitating the taking of bodily samples from an incapacitous adult for the purpose of DNA testing was capable of constituting 'appropriate consent' and 'qualifying consent' if the person died before the sampling or testing took place.
8.	*A v C* [2019] EWFC 22	The Human Fertilisation and Embryology Act 2008, s.54	Taking a "broad and purposeful interpretation" of the term "home with", the requirement for a child's home to be with the applicants for a parental order to be made was satisfied where the two parents were in England and the children were born following a surrogacy arrangement in Iran and were being looked after by the applicants' family in Iran.
2018			
9.	*Reeves v Revenue and Customs Commissioners* [2018] UKUT 293 (TCC)	Taxation of Chargeable Gains Act 1992 ss.165,167(2), 288	In the context of holdover relief claimed under s.165 by a taxpayer who had disposed of an interest by transferring it by way of a gift to a UK incorporated and resident company of which he was the sole shareholder and director, s.167(2) could not be used to disallow the relief on the basis that the transferee company was 'controlled' by the taxpayer's non-resident wife and children, who held no actual interest in the company but were associates of the taxpayer and therefore controlled the company pursuant to the Income and Corporation Taxes Act 1988 ("**ICTA**") s.416. The definition of 'control', imported into s.167(2) by s.288 from ICTA s.416, should be modified so that the attributions of interests between associates were limited to connected persons who controlled the transferee company by virtue of holding assets relating to that or any other company.
2017			
10.	*Jhuti v Royal Mail Group Limited* [2017] 7 WLUK 777	The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 sch. 1 para. 29	The power to make case management orders encompassed the power to order the appointment of a litigation friend for a party who lacked capacity to pursue litigation.
11.	*Re McManus' Application for Judicial Review* [2017] NIQB 10	Criminal Justice (Sentencing) (Licence Conditions) (NI) Rules 2009, r. 2	The Rules were to be construed to permit discretion in relation to the approval of residence outside of the United Kingdom.
2016			

No.	Case	Provision(s) in issue	Interpretation adopted using ordinary statutory interpretation supported by s.3 HRA
12.	*Francia Properties Ltd v Aristou* [2016] 8 WLUK 88	Commonhold and Leasehold Reform Act 2002, s.97	The appointment of a right to manage company did not prevent a landlord from carrying out development works. However, the landlord's right was not untrammelled, and it was required to take all reasonable steps to minimise the disturbance to the right to manage company's management functions both during and after the works.
13.	*NA (Pakistan) v Secretary of State for the Home Department* [2016] EWCA Civ 662	Nationality, Immigration and Asylum Act 2002, s.117C(3)	There had been an 'obvious drafting error' in the failure of s.117C(3) to make any provision for offenders who had been sentenced to imprisonment of between 12 months and four years, but fell outside the defined exceptions, to escape deportation if there were very compelling circumstances. Parliament would have intended to give the same right to such offenders as it gave to offenders who had been sentenced to more than four years' imprisonment.
14.	*Re C (Children) (Child in Care: Choice of Forename)* [2016] EWCA Civ 374	Children Act 1989, s.100	In extreme cases, the High Court could prevent a parent with parental responsibility from registering their child with the forename of their choice. This power could only be exercised where the parent's choice of forename gave rise to reasonable cause to believe that the child would suffer significant harm.
15.	*England and Wales Cricket Board Ltd v Tixdaq Ltd* [2016] EWHC 575 (Ch)	Copyright, Designs and Patents Act 1988, s.30(2)	The terms 'reporting' and 'current events' for the defence of fair dealing for the purposes of reporting current events to claims of copyright infringement were interpreted liberally. The terms were not restricted to traditional media but encompassed citizen journalism and could include contemporaneous sporting events.
16.	*Murphy v WTH* 2016 S.C.C.R. 135	Criminal Justice and Licensing (Scotland) Act 2010, s.121(3)	Section 121(3) (the prosecutor's duty to disclose information in criminal proceedings) to be interpreted in favour of disclosure of information if there was doubt as to its materiality.
17.	*Re F (Children) (Thai Surrogacy: Enduring Family Relationship)* [2016] EWHC 1594 (Fam)	Human Fertilisation and Embryology Act 2008, s.54(2)(c)	Purposive reading of the statute used to identify an 'enduring family relationship' of a couple who had applied for a parental order in respect of twins born in Thailand as a result of a commercial surrogacy agreement.
2015			
18.	*James v DPP* [2015] EWHC 3296 (Admin)	Public Order Act 1986, s.14(1)	A condition imposed under s.14(1) must be a lawful condition which would include that it must reasonably appear to be necessary to prevent serious disorder.

No.	Case	Provision(s) in issue	Interpretation adopted using ordinary statutory interpretation supported by s.3 HRA
19.	*Chivers v Northern Ireland Water Ltd* [2015] 5 WLUK 257	Water and Sewerage Services (Northern Ireland) Order 1973, art.55	The ordinary meaning of the words 'in consequence of' the execution of the works in Article 55 of the 1973 Order encompassed damage following as a result or effect of the execution of the works. This was not limited to direct physical damage and included *inter alia* the diminution in the value of the land.
20.	*Re Z (Children) (Application for Release of DNA Profiles)* [2015] 5 WLUK 257	Police and Criminal Evidence Act 1984, s.22	Section 22 did not permit the police to retain or use biometric material seized from premises under PACE 1984, s.19 for any purpose other than criminal enforcement.
21.	*Financial Conduct Authority v Da Vinci Invest Ltd* [2015] EWHC 2401 (Ch)	Financial Services and Markets Act 2000, s.129	The criteria that applied to s.123 (power of FCA to impose penalties) should also apply to s.129 (an application to the court by the FCA for the court to impose a penalty).
2014			
22.	*Rahmatullah v Ministry of Defence* [2014] EWHC 3846 (QB)	State Immunity Act 1978	The doctrine of state immunity did not bar the English court from hearing claims by two Pakistani citizens for damages in tort concerning their arrest, detention and ill treatment in Afghanistan by British and US officials. (Note, the doctrine of Crown act of state could bar the claim, conditions confirmed on appeal to Supreme Court *Rahmatullah v Ministry of Defence* [2017] UKSC 1).
23.	*Re X (A Child) (Parental Order: Time Limit)* [2014] EWHC 3135 (Fam)	Human Fertilisation and Embryology Act 2008 s.54(3)	A court could still make a parental order in respect of a child born to surrogate parents if the application was made after the expiration of the six-month period specified in s.54(3).
24.	*Bates van Winkelhof v Clyde & Co LLP* [2014] UKSC 32	Employment Rights Act 1996, s.230(3)(b)	An equity partner in a limited liability partnership could be a 'worker' s.230(3)(b) and therefore entitled to claim the protection of the whistleblowing provisions.
25.	*Registrar of Companies v Swarbrick* [2014] EWHC 1466 (Ch)	Insolvency Rules 1986, r.2.33A	Rule 2.33A could be read so as to enable an application and an order to be made retrospectively for the removal from the companies register by the Registrar of Companies a statement of proposals which contained material which fell within the ambit of r.2.33A (the disclosure of which would prejudice the conduct of the administration).
2013			
26.	*Pallet Route Solutions Ltd v Morris* [2013] 10 WLUK 324	Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004, sch.1 para.9	Schedule 1 paragraph 9 should be construed as meaning that where a respondent had presented a late response for unfair dismissal proceedings, although he could not claim as a matter

No.	Case	Provision(s) in issue	Interpretation adopted using ordinary statutory interpretation supported by s.3 HRA
			of right that he had to be heard in any further proceedings, he could ask to be heard, or could be permitted to do so.
27.	*Re AB* [2013] 9 WLUK 202	Mental Capacity Act 2005	The service of a statutory will application on a family member affected by it could only be dispensed by a court in exceptional circumstances, where there were compelling arguments to do so.
28.	*R. (on the application of Blackside Ltd) v Secretary of State for the Home Department* [2013] EWHC 2087 (Admin)	Customs and Excise Management Act 1979, sch.3 para.1	When seizing goods under the Customs and Excise Management Act 1979, Schedule 3 paragraph 1 contained an obligation for the Commissioner to serve notice on an owner at the time when the goods were seized and once his identity became known. The practice of the Border Force to provide the information required under Schedule 3 paragraph 1 but to state that the communication was not a 'notice of seizure' was an attempt to defeat the protection afforded to an order of goods and was to cease.
29.	*Ahmed v Revenue and Customs* [2013] EWHC 2241 (Admin)	Proceeds of Crime Act 2002 Part 5, s.298	Only part of the sum obtained from a company represented unpaid tax and was therefore recoverable property under s.298.
30.	*R. (on the application of Stern) v Horsham DC* [2013] EWHC 1460 (Admin)	Town and Country Planning Act 1990, s.174(2)(e)	A narrow reading was given to s.174(2)(e) to only be where copies of the enforcement notice had not been served at all, but not where copies were served late. Therefore, s.285(1) did not preclude judicial review proceedings being brought on the basis that enforcement notices were served late.

3. Cases where s.3 HRA was used when interpreting statutes which were Convention-compliant

A handful of cases were identified where there was no question of a prima facie breach of the Convention as a result of the statute, but s.3(1) HRA was used to interpret the terms used in the statute in line with the Convention and to justify the application of ECtHR jurisprudence when applying the statute to the facts of the case. Many of these cases related to the interpretation of the Equality Act 2010 and the balancing of different Convention rights which are engaged by the facts of a case. Seven examples of these cases are set out in the table below.

It is anticipated that there will be a number of further cases where the court has considered Convention rights when applying a statute to the facts of a case or when interpreting a term which necessarily engages Convention rights, but where s.3(1) HRA may not have been specifically mentioned in the court's judgment. This is in part because all legislation must be read in a way that is compatible with Convention rights under s.3(1) HRA and there are likely cases where this was not controversial and nor did it involve any 'strained' reading of the legislation, such that s.3(1) HRA was not referred to by the court.

No.	Case	Statute / provision(s) in issue	Relevance of the Convention
1.	*Forstater v CGD Europe* [2019] 12 WLUK 516	Equality Act 2010, ss.4 and 10	Convention rights (Articles 8, 12, 9 and 10) to be balanced in deciding whether an individual's belief is a 'belief' for the purpose of s.10 and therefore a protected characteristic pursuant to s.4.
2.	*Sethi v Elements Personnel Services Ltd* [2019] 11 WLUK 542	Equality Act 2010, ss.19 and 39	Article 9 and ECtHR jurisprudence (on what is necessary for a professed manifestation of a religious belief to engage Article 9) relevant when considering claims for indirect discrimination based on religion under ss.19 and 39.
3.	*DPP v Ziegler DPP v Cooper* [2019] EWHC 71 (Admin)	Highways Act 1980, s.137	If a defendant had been lawfully exercising their Convention rights (Articles 10 and 11), in the sense that an interference with their rights would be disproportionate and unlawful under s.6(1) HRA, they were acting with a lawful excuse and therefore not committing the offence of wilfully obstructing a highway without lawful excuse under s.137.
4.	*Mbuyi v Newpark Childcare (Shepherds Bush) Ltd* [2015] 6 WLUK 159	Equality Act 2010	Articles 9 (including the right to manifest one's belief), 8 and 14, and ECtHR jurisprudence to be considered by the court when determining whether an individual had been unlawfully discriminated against.
5.	*Merlin Entertainments LPC v Cave* [2014] EWHC 3036 (QB	Protection from Harassment Act 1997	Article 10 to be considered when reading and applying the Protection from Harassment Act 1997.
6.	*TW v Enfield LBC* [2014] EWCA Civ 362	Mental Health Act 1983, s.11(4)	In considering whether it was 'not reasonably practicable', under s.11(4), to consult a patient's nearest relative before an application to admit them to hospital, the approved social worker had to strike a balance between the patient's Article 5 and Article 8(1) rights.
7.	*Fraser v University & College Union* [2013] 3 WLUK 642	Equality Act 2010, s.26	Article 10 to be considered in relation to whether the criteria for harassment at s.26 had been made out.