

Porter v Magill [2001] UKHL 67

Case Overview

Porter v Magill established the two-stage test for apparent bias which requires a Court to establish all the circumstances giving rise to an allegation of apparent bias and considering whether those circumstances would lead a fair-minded and informed observer to conclude that there was a real possibility of bias.

Background Facts

The facts giving rise to the above-mentioned test are as follows. John Magill was an auditor appointed to audit the accounts of Westminster City Council for the years 1987 to 1988 and 1994 to 1995. After the audit Magill concluded that three councillors and three officers, by wilful misconduct had jointly and severally caused a loss of £31m to the council and were liable to make good on the loss. The councillors and two officers appealed the auditor's decision to the Queen's Bench Divisional Court. The charges against four of the respondents were dropped but upheld against the leader of the council (Dame Shirley Porter) and the managing director of the council (Mr David Weeks) respectively.

The audit revealed that Dame Shirley Porter developed and promoted a policy of targeting sales of council-owned properties to potential owner-occupiers. The policy was called "Building Stable Communities". Its overall objective was to ensure Conservative party success in the upcoming 1990 elections by increasing Conservative votes in eight key marginal wards. Owner-occupiers were considered more likely to vote Conservative and they were therefore targeted as potential applicants for the council dwellings offered for sale. The auditor found that the policy of designated sales effectively amounted to gerrymandering and was unlawful. The Divisional Court upheld the auditor's findings against Porter and Weeks but reduced the sum certified. The court allowed the appeals by the two officers and one of the councillors (Mr Hartley) and quashed the certificates in relation to them. Porter and Weeks appealed the decision to the Court of Appeal which upheld both appeals on liability

Outcome

One of the matters considered by the Court of Appeal was that of apparent bias. The issue before the present Court was whether the auditor's decision could be quashed on the grounds of apparent bias. The respondents contended that statements made by the auditor during a public press conference on 13 January 1994, indicated an appearance of bias which affected the entirety of his investigation. In order to establish whether the auditor's decision should be set aside on account of apparent bias the Court applied the following test: *"whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased"*.

On application of the above test to the circumstances of this cases the Court determined that there was no real possibility that the auditor was biased.